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2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 Civil Action No. 16-cv-951 (LAK)

5 -----x

6 DANIEL KLEEBERG, LISA STEIN and
7 AUDREY HAYS,

8 Plaintiffs,

9 -against-

10 LESTER EBER; ALEXBAY, LLC f/k/a LESTER
11 EBER, LLC; CANANDAIGUA NATIONAL
12 CORPORATION d/b/a CANANDAIGUA NATIONAL
13 BANK & TRUST; ELLIOT W. GUMAER, JR.;
14 EBER BROS. & CO., INC.; EBER BROS.
15 WINE AND LIQUOR CORPORATION; EBER
16 BROS. WINE AND LIQUOR METRO, INC.,
17 EBER-CONNECTICUT, LLC; and WENDY EBER,
18 Defendants.

19 -----x

20
21 January 24, 2019

22
23 Videotaped deposition of LESTER EBER
24
25

PLAINTIFF'S
EXHIBIT

176

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2 January 24, 2019</p> <p>3 9:33 a.m.</p> <p>4</p> <p>5</p> <p>6 Videotaped deposition of LESTER EBER,</p> <p>7 held at the offices of Veritext New York City,</p> <p>8 1250 Broadway, New York, New York, pursuant to</p> <p>9 Notice, before Lynne D. Metz, a Shorthand Reporter</p> <p>10 and Notary Public of the State of New York.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1</p> <p>2 A P P E A R A N C E S: (Cont'd):</p> <p>3</p> <p>4 JOHN HERBERT, ESQ. (Telephonically)</p> <p>5 Attorneys for Defendants LESTER EBER and</p> <p>6 WENDY EBER</p> <p>7 P.O. Box 1031</p> <p>8 Tiburone, California 94920</p> <p>9</p> <p>10</p> <p>11 CALIHAN LAW PLLC</p> <p>12 Attorneys for Defendant Estate of ELLIOT W.</p> <p>13 GUMAER</p> <p>14 16 East Main Street</p> <p>15 Rochester, New York 14614</p> <p>16 BY: ROBERT B. CALIHAN, ESQ.</p> <p>17</p> <p>18</p> <p>19 ALSO PRESENT:</p> <p>20 Wayne Saline - Videographer</p> <p>21 Dan Kleeberg</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 A P P E A R A N C E S:</p> <p>3</p> <p>4 BROOK & ASSOCIATES PLLC</p> <p>5 Attorneys for Plaintiffs</p> <p>6 100 Church Street</p> <p>7 8th Floor</p> <p>8 New York, New York 10007</p> <p>9 BY: BRIAN C. BROOK, ESQ.</p> <p>10</p> <p>11</p> <p>12 UNDERBERG & KESSLER LLP</p> <p>13 Attorneys for Defendants LESTER EBER;</p> <p>14 ALEXBAY, LLC f/k/a LESTER EBER, LLC; EBER</p> <p>15 BROS. & CO., INC.; EBER BROS. WINE AND</p> <p>16 LIQUOR CORPORATION; EBER BROS. WINE AND</p> <p>17 LIQUOR METRO, INC., EBER-CONNECTICUT, LLC;</p> <p>18 and WENDY EBER</p> <p>19 50 Fountain Plaza</p> <p>20 Buffalo, New York 14202</p> <p>21 BY: COLIN D. RAMSEY, ESQ.</p> <p>22</p> <p>23 (Appearances continued on next page)</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1</p> <p>2</p> <p>3</p> <p>4 IT IS HEREBY STIPULATED AND AGREED, by and</p> <p>5 between the attorneys for the respective parties</p> <p>6 herein, that filing and sealing be and the same</p> <p>7 are hereby waived.</p> <p>8 IT IS FURTHER STIPULATED AND AGREED</p> <p>9 that all objections, except as to the form of the</p> <p>10 question, shall be reserved to the time</p> <p>11 of the trial.</p> <p>12 IT IS FURTHER STIPULATED AND AGREED that the</p> <p>13 within deposition may be signed and sworn to</p> <p>14 before any officer authorized to administer an</p> <p>15 oath, with the same force and effect as if signed</p> <p>16 and sworn to before the officer before whom the</p> <p>17 within deposition was taken.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 6</p> <p>1</p> <p>2 THE VIDEOGRAPHER: We are going on the</p> <p>3 record at 9:33 on January 24, 2019. Please</p> <p>4 note that the microphones are sensitive and</p> <p>5 may pick up whispering and private</p> <p>6 conversations. Please turn off all cell</p> <p>7 phones and place them away from the</p> <p>8 microphones as they may interfere with the</p> <p>9 deposition audio. Recording will continue</p> <p>10 until all parties agree to go off the</p> <p>11 record.</p> <p>12 This is media unit one of the video</p> <p>13 recorded deposition of Lester Eber taken by</p> <p>14 counsel for plaintiff in the matter of Dan</p> <p>15 Kleeberg et al versus Lester Eber et al</p> <p>16 filed in the United States District Court</p> <p>17 Southern District of New York, case number</p> <p>18 16-CV-9517 (LAK). This deposition is being</p> <p>19 held at Veritext located at 1250 Broadway</p> <p>20 New York, New York.</p> <p>21 My name is Wayne Saline from the firm</p> <p>22 Veritext. I am the videographer. The court</p> <p>23 reporter is Lynne Metz from the firm</p> <p>24 Veritext.</p> <p>25 At this time the attorneys will</p>	<p style="text-align: right;">Page 8</p> <p>1 L. Eber</p> <p>2 Q. Just because no matter how many times</p> <p>3 you do this it is worth going over it again. I</p> <p>4 will go over some of the differences between</p> <p>5 today's deposition and a typical conversation to</p> <p>6 make sure that we are as efficient and have as</p> <p>7 clean a record as possible.</p> <p>8 One major difference is there is a</p> <p>9 court reporter writing down everything that we</p> <p>10 say. So even though there is a videographer</p> <p>11 recording it too, it is important that we do our</p> <p>12 best not to talk over each other. Even if you</p> <p>13 know where I am going with the question, please</p> <p>14 let me finish the question before you answer it.</p> <p>15 Okay?</p> <p>16 MR. RAMSEY: Yes?</p> <p>17 A. Yes.</p> <p>18 Q. And that brings me to the next point.</p> <p>19 All responses need to be verbal meaning yes or no</p> <p>20 rather than shaking your head or grunts like aha.</p> <p>21 Okay?</p> <p>22 A. Yes.</p> <p>23 Q. Another thing is that if I ask a</p> <p>24 question and you answer it, I am going to assume</p> <p>25 that you understood the question. So if there is</p>
<p style="text-align: right;">Page 7</p> <p>1 L. Eber</p> <p>2 introduce themselves and their affiliations</p> <p>3 for the record. The court reporter will</p> <p>4 swear in the witness and we can proceed.</p> <p>5 MR. BROOK: On behalf of the</p> <p>6 plaintiffs Brian Brook of Brook and</p> <p>7 Associates PLLC.</p> <p>8 MR. RAMSEY: Colin Ramsey from</p> <p>9 Underberg and Kessler on behalf of the Eber</p> <p>10 defendants.</p> <p>11 MR. CALIHAN: Robert Calihan on behalf</p> <p>12 of the Estate of Elliot Gumaer.</p> <p>13 MR. KLEEGERG: Dan Kleeberg.</p> <p>14 L E S T E R E B E R,</p> <p>15 called as a witness, having been first duly</p> <p>16 sworn by the Notary Public (Lynne D. Metz),</p> <p>17 was examined and testified as follows:</p> <p>18 EXAMINATION BY</p> <p>19 MR. BROOK:</p> <p>20 Q. Good morning Mr. Eber.</p> <p>21 Have you been deposed before?</p> <p>22 A. Yes.</p> <p>23 Q. When is the last time you were</p> <p>24 deposed?</p> <p>25 A. A couple of years ago.</p>	<p style="text-align: right;">Page 9</p> <p>1 L. Eber</p> <p>2 something in my question that you don't understand</p> <p>3 be sure to ask me to clarify my question before</p> <p>4 you answer it.</p> <p>5 Okay?</p> <p>6 A. Yes.</p> <p>7 Q. How do you feel today?</p> <p>8 A. Okay.</p> <p>9 Q. Is there any reason such as being</p> <p>10 tired, overly stressed or on prescription</p> <p>11 medications or something like that that would</p> <p>12 impair your ability to testify fully and</p> <p>13 truthfully today?</p> <p>14 A. Not that I know of.</p> <p>15 Q. What is your date of birth?</p> <p>16 A. 1/26/38.</p> <p>17 Q. And what is your home address?</p> <p>18 A. 15 Coral Way, Rochester, New York.</p> <p>19 Q. When you were last deposed, what was</p> <p>20 the legal matter that was in connection with?</p> <p>21 A. It was part of being a lobbyist for</p> <p>22 Southern Glazer Wine and Liquor.</p> <p>23 Q. And how was that part of the being a</p> <p>24 lobbyist, sir?</p> <p>25 A. It was guarding legislation that had</p>

<p style="text-align: right;">Page 62</p> <p>1 L. Eber</p> <p>2 A. If that's what it says, yes.</p> <p>3 Q. What was Southern Wine and Spirits</p> <p>4 Upstate Inc.?</p> <p>5 A. That would be their upstate business</p> <p>6 as opposed to Metropolitan New York.</p> <p>7 Q. Earlier you referred to a company</p> <p>8 called Southern Glazer.</p> <p>9 What is that?</p> <p>10 A. They merged with Glazer out of Dallas,</p> <p>11 Texas.</p> <p>12 Q. When did that merger occur?</p> <p>13 A. A couple of years ago I believe.</p> <p>14 Q. But for all intents and purposes in</p> <p>15 terms of your relationship with that, with the</p> <p>16 Southern company, the merger did not, with Glazer</p> <p>17 did not affect that relationship; correct?</p> <p>18 A. No.</p> <p>19 Q. How was the consulting agreement</p> <p>20 Exhibit 27 negotiated?</p> <p>21 A. You have to ask a lawyer. Probably</p> <p>22 Pat Dalton.</p> <p>23 Q. So Pat Dalton negotiated this for you?</p> <p>24 A. I would -- I believe so. I can't</p> <p>25 think of anyone else.</p>	<p style="text-align: right;">Page 64</p> <p>1 L. Eber</p> <p>2 Q. Why was it limited to five years?</p> <p>3 A. That's what they would give me because</p> <p>4 I needed a job and they had worked with us to help</p> <p>5 us stay out of bankruptcy and I felt an obligation</p> <p>6 to work with them and they thought that was a fair</p> <p>7 amount of time and gave me the time to set up a</p> <p>8 structure for them of lobbyists with the state. I</p> <p>9 am a lobbyist myself and to represent them in the</p> <p>10 legislature with the State Liquor Authority and</p> <p>11 the Governor's Office.</p> <p>12 Q. Why do you say that you needed a job?</p> <p>13 A. Everyone needs a job. We lost the</p> <p>14 business. We lost everything in New York.</p> <p>15 Q. You still had a job with Eber</p> <p>16 Connecticut; correct?</p> <p>17 A. Eber Connecticut was not in very good</p> <p>18 condition at that time.</p> <p>19 MR. BROOK: Let's go ahead and get</p> <p>20 another exhibit going here. Mark this as</p> <p>21 Plaintiffs' 28.</p> <p>22 (Plaintiffs' Exhibit 28, a series of</p> <p>23 W-2s that were produced by the parties in</p> <p>24 discovery Bates numbers EB 00021420 through</p> <p>25 428, marked for identification, as of this</p>
<p style="text-align: right;">Page 63</p> <p>1 L. Eber</p> <p>2 Q. Did you pay Pat Dalton for negotiating</p> <p>3 this agreement yourself?</p> <p>4 A. I believe he billed the company.</p> <p>5 Q. And why did he bill the company for</p> <p>6 doing work to negotiate an agreement between you</p> <p>7 personally?</p> <p>8 A. I don't remember who paid him.</p> <p>9 Q. But is it fair to say you don't</p> <p>10 remember paying Pat Dalton yourself; correct?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 A. I just don't remember. It's possible</p> <p>13 but I don't remember who paid him.</p> <p>14 Q. And just to be totally clear, if you</p> <p>15 look at the last page 9, what's listed page 9 of 9</p> <p>16 that's your signature; correct? There are</p> <p>17 two-page 9s.</p> <p>18 MR. RAMSEY: (Indicating.)</p> <p>19 A. Yes, the first one.</p> <p>20 Q. That is your signature?</p> <p>21 A. Yes.</p> <p>22 Q. How was -- let's step back.</p> <p>23 So this was an agreement originally</p> <p>24 drafted with a five year term; correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 65</p> <p>1 L. Eber</p> <p>2 date.)</p> <p>3 Q. Plaintiffs' 28 is a series of W-2s</p> <p>4 that were produced by the Eber parties in</p> <p>5 discovery bearing Bates numbers EB 00021420</p> <p>6 through 428.</p> <p>7 Do you recognize the documents that</p> <p>8 are copied off of this exhibit?</p> <p>9 A. Yes.</p> <p>10 Q. What are they?</p> <p>11 A. W-2s.</p> <p>12 Q. And do you see on the first page it</p> <p>13 has W-2s for the years 2007, 2008 and 2009?</p> <p>14 A. Mm-hmm.</p> <p>15 MR. RAMSEY: Yes?</p> <p>16 Q. Is that a yes?</p> <p>17 A. Yes.</p> <p>18 Q. And so is it correct that according to</p> <p>19 this exhibit Eber Brothers Wine and Liquor Corp.</p> <p>20 paid you 303,021 dollars for the year 2007?</p> <p>21 A. Yes.</p> <p>22 Q. So that was the year when the</p> <p>23 consulting agreement we were just looking at was</p> <p>24 executed; correct?</p> <p>25 A. Yes.</p>

17 (Pages 62 - 65)

<p style="text-align: right;">Page 66</p> <p>1 L. Eber</p> <p>2 Q. And then the next year you received a</p> <p>3 W-2 from Eber Connecticut LLC; correct?</p> <p>4 A. Yes.</p> <p>5 Q. And in that year Eber Connecticut LLC</p> <p>6 paid you wages, tips and other compensation</p> <p>7 totalling 189,788 dollars; correct?</p> <p>8 A. Yes.</p> <p>9 Q. So not quite as much paid by Eber</p> <p>10 Connecticut as you had made the year before from</p> <p>11 Eber Brothers Wine and Liquor; correct?</p> <p>12 A. That's correct.</p> <p>13 Q. Just under two thirds of the amount;</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. Now the consulting agreement provided</p> <p>17 for an annual sum for five years of six hundred</p> <p>18 thousand dollars per year; correct?</p> <p>19 A. Yes.</p> <p>20 Q. So that was more than twice what you</p> <p>21 were paid in terms of salary by Eber Brothers Wine</p> <p>22 and Liquor Corp.?</p> <p>23 A. Yes.</p> <p>24 Q. How did that amount get determined in</p> <p>25 the course of negotiations?</p>	<p style="text-align: right;">Page 68</p> <p>1 L. Eber</p> <p>2 correct? Is that a yes?</p> <p>3 A. Yes.</p> <p>4 Q. In connection with the overall</p> <p>5 transaction, Southern ended up giving what was, I</p> <p>6 suppose some kind of a loan in the amount of three</p> <p>7 million dollars to one of the Eber companies; is</p> <p>8 that right?</p> <p>9 A. Yes. I don't know if it was a loan.</p> <p>10 It was money that the Eber companies owned, owed</p> <p>11 Southern for the money they came up with to keep</p> <p>12 us out of bankruptcy.</p> <p>13 Q. So it wasn't a loan per se but one or</p> <p>14 more of the Eber companies agreed that they owed</p> <p>15 Southern three million dollars as a result of the</p> <p>16 deal; correct?</p> <p>17 A. Yes. As a result of moneys that were</p> <p>18 paid to them to pay them back for the money they</p> <p>19 advanced us to keep us out of bankruptcy.</p> <p>20 Q. So how much money did Southern advance</p> <p>21 to the Eber companies not counting your consulting</p> <p>22 agreement?</p> <p>23 A. I don't remember the figure. It was</p> <p>24 substantial.</p> <p>25 Q. Was it more than three million</p>
<p style="text-align: right;">Page 67</p> <p>1 L. Eber</p> <p>2 A. They are a very large company. They</p> <p>3 are 17 billion today. They do 2 billion in New</p> <p>4 York. Two thousand employees. They pay big</p> <p>5 salaries.</p> <p>6 Q. So did you ask for this consulting</p> <p>7 agreement?</p> <p>8 A. They offered it to me.</p> <p>9 Q. And did they ask for anything else in</p> <p>10 return besides your governmental affairs services?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 A. They gave me the freedom to set up a</p> <p>13 lobbying governmental affairs structure in the</p> <p>14 State of New York for them.</p> <p>15 Q. Did they ask for anything else in</p> <p>16 return for agreeing to this six hundred thousand</p> <p>17 dollars a year for five years payment?</p> <p>18 MR. RAMSEY: Form.</p> <p>19 A. No.</p> <p>20 MR. RAMSEY: Form objection to that</p> <p>21 question.</p> <p>22 Q. So Southern did not -- let's step</p> <p>23 back.</p> <p>24 So six hundred thousand a year for</p> <p>25 five years, that's three million dollars total;</p>	<p style="text-align: right;">Page 69</p> <p>1 L. Eber</p> <p>2 dollars?</p> <p>3 A. Yes.</p> <p>4 Q. So of the amount of money that was</p> <p>5 advanced, Eber Brothers agreed to pay back three</p> <p>6 million of it; correct?</p> <p>7 MR. RAMSEY: Form.</p> <p>8 A. They paid back all the money that was</p> <p>9 advanced to them.</p> <p>10 Q. So separate from advancements, did</p> <p>11 Southern also make payments that were not subject</p> <p>12 to repayment to Eber Brothers not counting</p> <p>13 payments for inventory?</p> <p>14 A. No.</p> <p>15 Q. So is it just a coincidence then that</p> <p>16 the amount of money that Eber Brothers was</p> <p>17 required to pay Southern three million dollars is</p> <p>18 the same amount that the consulting agreement</p> <p>19 provided to be paid to you?</p> <p>20 MR. RAMSEY: Form.</p> <p>21 A. I never thought of it that way at all.</p> <p>22 I never thought of that.</p> <p>23 Q. Besides Patrick Dalton, was anyone</p> <p>24 else involved in negotiating or reviewing your</p> <p>25 consulting agreement with Southern?</p>

<p style="text-align: right;">Page 70</p> <p>1 L. Eber</p> <p>2 A. I don't remember.</p> <p>3 Q. Was Mike Gumaer involved in the</p> <p>4 consulting agreement with Southern?</p> <p>5 A. He would be aware of anything I was</p> <p>6 involved in. Everything I did he knew about.</p> <p>7 Q. Do you have any specific recollections</p> <p>8 of discussing the consulting agreement with Mike</p> <p>9 Gumaer?</p> <p>10 A. I don't remember, but there is nothing</p> <p>11 that I would have done that he would not be aware</p> <p>12 of.</p> <p>13 Q. And do you recall discussing the</p> <p>14 consulting agreement with any other employees of</p> <p>15 Eber Brothers?</p> <p>16 A. Possibly the financial officer John</p> <p>17 Ryan.</p> <p>18 Q. You say possibly.</p> <p>19 You don't specifically recall doing</p> <p>20 so?</p> <p>21 A. I can't remember.</p> <p>22 Q. And the consulting agreement was not</p> <p>23 specifically approved by the board of directors;</p> <p>24 correct?</p> <p>25 A. I don't know.</p>	<p style="text-align: right;">Page 72</p> <p>1 L. Eber</p> <p>2 letters that appears to be written on Lester</p> <p>3 Eber's letterhead bearing Bates stamps EB 695</p> <p>4 through 701.</p> <p>5 Do you see these letters?</p> <p>6 A. Yes.</p> <p>7 Q. Do these refresh your recollection</p> <p>8 that there was a subsequent agreement, subsequent</p> <p>9 agreements between you and Southern concerning</p> <p>10 consulting?</p> <p>11 A. I think you are a little confused on</p> <p>12 this.</p> <p>13 Q. Okay. Help me understand.</p> <p>14 A. This is an agreement. I am a</p> <p>15 registered lobbyist in the State of New York.</p> <p>16 JACO is the regulatory agency that supervises</p> <p>17 lobbyists and they pay me to be a lobbyist. I</p> <p>18 think it is ten thousand dollars a year and I</p> <p>19 happen to have an agreement in order to lobby with</p> <p>20 the governmental agencies and the Governor's</p> <p>21 Office in the State of New York and that's what</p> <p>22 this is.</p> <p>23 Q. So are you saying are there any other</p> <p>24 -- let's step back.</p> <p>25 So just looking at the first page of</p>
<p style="text-align: right;">Page 71</p> <p>1 L. Eber</p> <p>2 Q. In addition to providing governmental</p> <p>3 affairs services, Southern also required you to</p> <p>4 enter into a restrictive covenant; correct?</p> <p>5 A. Yes.</p> <p>6 Q. Why was that?</p> <p>7 A. It was what they wanted so that I</p> <p>8 wouldn't compete or someone else would hire me for</p> <p>9 doing governmental work. It is a specialty.</p> <p>10 Q. And after the initial five-year term,</p> <p>11 did you continue to have -- withdrawn.</p> <p>12 After the initial five-year term, were</p> <p>13 there subsequent agreements between you and</p> <p>14 Southern for consulting services?</p> <p>15 A. There is no agreement. I am a</p> <p>16 consultant for them.</p> <p>17 MR. BROOK: Let's go to the next</p> <p>18 Exhibit 29.</p> <p>19 (Plaintiffs' Exhibit 29, a series of</p> <p>20 letters that appears to be written on Lester</p> <p>21 Eber's letterhead bearing Bates stamps EB</p> <p>22 695 through 701, marked for identification,</p> <p>23 as of this date.)</p> <p>24 Q. I am showing you what has been marked</p> <p>25 as Plaintiffs' Exhibit 29. It is a series of</p>	<p style="text-align: right;">Page 73</p> <p>1 L. Eber</p> <p>2 this exhibit that's a letter dated January 1, 2012</p> <p>3 addressed to Steven Becker.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Who is Steven Becker?</p> <p>7 A. He is principal in charge of</p> <p>8 governmental affairs for the United States for</p> <p>9 Southern Glazers.</p> <p>10 Q. And this letter, is this something you</p> <p>11 wrote up or the language was given to you by</p> <p>12 someone else?</p> <p>13 A. I don't remember, but it is what has</p> <p>14 to be done to give the JACO in New York. I have</p> <p>15 to be a registered lobbyist. It is required.</p> <p>16 Q. And is the contract between you and</p> <p>17 the company that you are lobbying for something</p> <p>18 that has to be disclosed to the government?</p> <p>19 A. Yes, the State of New York. It is</p> <p>20 disclosed to the State of New York, yes.</p> <p>21 Q. So when we were looking at the</p> <p>22 consulting agreement, Exhibit 27, is that a</p> <p>23 document that was disclosed to the State of New</p> <p>24 York?</p> <p>25 A. No.</p>

19 (Pages 70 - 73)

<p style="text-align: right;">Page 74</p> <p>1 L. Eber</p> <p>2 Q. Why not?</p> <p>3 A. It's not a lobbying agreement. This</p> <p>4 is a governmental lobbying agreement that I have</p> <p>5 to have as being a lobbyist, a registered</p> <p>6 lobbyist.</p> <p>7 Q. So --</p> <p>8 A. The other is a private agreement</p> <p>9 between myself and Southern.</p> <p>10 Q. So for the years 2007 through 2011,</p> <p>11 was there a separate lobbying agreement between</p> <p>12 you and Southern?</p> <p>13 A. There should have been.</p> <p>14 Q. Do you recall whether there was an</p> <p>15 actual one?</p> <p>16 A. I don't remember, but I don't know if</p> <p>17 they required the agreements changed and I can't</p> <p>18 remember everything, but I think with the JACO</p> <p>19 regulations Southern told me that, you know, I</p> <p>20 have to have a -- because of the time I am</p> <p>21 spending in Albany with the legislature and the</p> <p>22 State Liquor Authority or with the Governor's</p> <p>23 Office that I have to register as a lobbyist and I</p> <p>24 had not registered as a lobbyist before.</p> <p>25 Q. So for the year 2012, the year covered</p>	<p style="text-align: right;">Page 76</p> <p>1 L. Eber</p> <p>2 compensation.</p> <p>3 What is your best estimate of what</p> <p>4 your annual compensation from Southern has been in</p> <p>5 total for any of the years from 2012 through the</p> <p>6 present?</p> <p>7 MR. RAMSEY: Form.</p> <p>8 Go ahead. If you can give an</p> <p>9 estimate, go ahead.</p> <p>10 A. Yeah, I think it's twenty-five</p> <p>11 thousand a month.</p> <p>12 Q. Do you recall attending a settlement</p> <p>13 conference in this case in early September last</p> <p>14 year?</p> <p>15 A. Yes, I believe so.</p> <p>16 Q. Do you remember that at one point</p> <p>17 everyone except for Mr. Gumaer's attorney was</p> <p>18 sitting in the courtroom with the judge in a</p> <p>19 circle and we were talking about certain fact</p> <p>20 questions that the plaintiffs had?</p> <p>21 A. I believe it went on. I don't</p> <p>22 remember the questions.</p> <p>23 Q. Do you recall that I brought up the</p> <p>24 topic of your consulting agreement with Southern</p> <p>25 at that point?</p>
<p style="text-align: right;">Page 75</p> <p>1 L. Eber</p> <p>2 by page one of Exhibit 29, what was your total</p> <p>3 compensation received from Southern Wine and</p> <p>4 Spirits for all your activities on their behalf</p> <p>5 lobbying, consulting or otherwise?</p> <p>6 A. I don't remember.</p> <p>7 Q. According to this document it says the</p> <p>8 fee for your services covered by it was ten</p> <p>9 thousand dollars?</p> <p>10 A. Oh, for lobbying. Yes, for being a</p> <p>11 registered lobbyist was 10,833 a month is what I</p> <p>12 get from them.</p> <p>13 Q. And were you paid other sums as well?</p> <p>14 A. I was paid yes, as a consultant. Yes.</p> <p>15 RQ MR. BROOK: We request that all</p> <p>16 payment records between Mr. Eber and</p> <p>17 Southern be produced including tax forms and</p> <p>18 any other agreements that may exist that</p> <p>19 show fees for consulting or other services</p> <p>20 beyond the amount reflected on this Exhibit</p> <p>21 29.</p> <p>22 MR. RAMSEY: I understand your</p> <p>23 request.</p> <p>24 BY MR. BROOK:</p> <p>25 Q. You said you don't remember the exact</p>	<p style="text-align: right;">Page 77</p> <p>1 L. Eber</p> <p>2 A. I don't remember it.</p> <p>3 Q. So you don't remember saying that that</p> <p>4 consulting agreement and the payments relating to</p> <p>5 it ended back in 2012?</p> <p>6 MR. RAMSEY: Form.</p> <p>7 A. Yes. I do remember the agreement</p> <p>8 ended after five years, the consulting agreement.</p> <p>9 Q. But is it your testimony that at least</p> <p>10 half or approximately half of the payments</p> <p>11 continued in the years afterwards?</p> <p>12 MR. RAMSEY: Form.</p> <p>13 A. Yes.</p> <p>14 Q. It is your testimony that's not</p> <p>15 pursuant to any kind of agreement between you and</p> <p>16 Southern?</p> <p>17 A. Yes.</p> <p>18 Q. So how does the amount of money that</p> <p>19 Southern pays you get determined?</p> <p>20 A. It is what they feel my services are</p> <p>21 worth.</p> <p>22 Q. So what happens if Southern decides to</p> <p>23 pay you nothing for your services?</p> <p>24 A. I am through.</p> <p>25 Q. Meaning you are not going to provide</p>

20 (Pages 74 - 77)

<p style="text-align: right;">Page 78</p> <p>1 L. Eber</p> <p>2 services for Southern anymore?</p> <p>3 A. I won't be involved with them, that's</p> <p>4 correct, yes.</p> <p>5 Q. Other than monthly payments of</p> <p>6 approximately twenty-five thousand dollars per</p> <p>7 month, are there any other benefits or perks that</p> <p>8 you receive from Southern?</p> <p>9 MR. RAMSEY: Form.</p> <p>10 A. I don't get any fringe benefits from</p> <p>11 them of any kind. I do get expenses, legitimate</p> <p>12 business expenses.</p> <p>13 Q. Do you have an expense credit card for</p> <p>14 Southern?</p> <p>15 A. No.</p> <p>16 Q. So how do you submit your expenses to</p> <p>17 Southern?</p> <p>18 A. I submit them monthly.</p> <p>19 Q. And are you still bound by any kind of</p> <p>20 restrictive covenant with Southern?</p> <p>21 MR. RAMSEY: Form.</p> <p>22 A. I don't believe so.</p> <p>23 Q. So you believe at this point if you</p> <p>24 went and tried to start up the Eber Brothers Wine</p> <p>25 and Liquor business in New York that would not be</p>	<p style="text-align: right;">Page 80</p> <p>1 L. Eber</p> <p>2 manage the Eber assets?</p> <p>3 MR. RAMSEY: Form.</p> <p>4 A. For the beneficiaries of the trust.</p> <p>5 Q. Who were the beneficiaries of the</p> <p>6 trust?</p> <p>7 A. Myself and my sisters.</p> <p>8 Q. And after your sisters passed, who</p> <p>9 were the other beneficiaries of the trust at that</p> <p>10 point?</p> <p>11 A. It was their children.</p> <p>12 Q. And that is for your sister Nan.</p> <p>13 What was her child's name?</p> <p>14 A. Mildred was my sister.</p> <p>15 Q. Sorry. I think I was using her middle</p> <p>16 name.</p> <p>17 What was Mildred's daughter's name?</p> <p>18 A. Audrey.</p> <p>19 Q. And your sister Sally, what were her</p> <p>20 kid's names?</p> <p>21 A. Danny and Lisa.</p> <p>22 Q. After your sisters passed, did you</p> <p>23 continue to understand you had an obligation to</p> <p>24 manage the trust for the benefit of your nieces</p> <p>25 and nephew?</p>
<p style="text-align: right;">Page 79</p> <p>1 L. Eber</p> <p>2 something that would violate any agreement you</p> <p>3 have with Southern?</p> <p>4 MR. RAMSEY: Form.</p> <p>5 A. I don't know about that. It's not</p> <p>6 something I am going to do.</p> <p>7 Q. I am going to change topics now.</p> <p>8 How did you, if you know, how did it</p> <p>9 come to pass that you were named a trustee of the</p> <p>10 Allen Eber trust?</p> <p>11 A. I do not know.</p> <p>12 Q. Is this something that you had</p> <p>13 discussed with your father before his passing?</p> <p>14 A. No.</p> <p>15 Q. What is your understanding of what</p> <p>16 your responsibilities were as a named trustee of</p> <p>17 the Allen Eber trust?</p> <p>18 A. My responsibilities?</p> <p>19 Q. Yes.</p> <p>20 As a trustee, what did that mean that</p> <p>21 you had to do?</p> <p>22 MR. RAMSEY: Form.</p> <p>23 A. With the -- work with the other</p> <p>24 co-trustees in managing the Eber assets.</p> <p>25 Q. And for whom's benefit did you have to</p>	<p style="text-align: right;">Page 81</p> <p>1 L. Eber</p> <p>2 A. I didn't manage the trust. I worked</p> <p>3 with the other two trustees.</p> <p>4 Q. Who were the other two trustees?</p> <p>5 A. Mike Gumaer and the bank.</p> <p>6 Q. What was Mike Gumaer's involvement in</p> <p>7 managing the trust?</p> <p>8 A. He was a lawyer and he was put there</p> <p>9 by my father to work and guide me in the</p> <p>10 management of the business and to work with me in</p> <p>11 the trust.</p> <p>12 Q. Was Mike Gumaer a lawyer for the</p> <p>13 trust?</p> <p>14 MR. RAMSEY: Form.</p> <p>15 A. No. He was a lawyer for Eber Brothers</p> <p>16 but he was a trustee of the trust.</p> <p>17 Q. What was the bank's responsibility</p> <p>18 with respect to the trust?</p> <p>19 A. They were there. They did a lot of</p> <p>20 the paperwork and legal work of the operation of</p> <p>21 the trust.</p> <p>22 Q. You understood that the Eber Brothers</p> <p>23 business was a trust asset; correct?</p> <p>24 A. Yes.</p> <p>25 Q. What did that mean in terms of how it</p>

<p style="text-align: right;">Page 82</p> <p>1 L. Eber</p> <p>2 affected your management of the Eber Brothers</p> <p>3 business?</p> <p>4 MR. RAMSEY: Form.</p> <p>5 MR. CALIHAN: Form.</p> <p>6 A. I don't understand the question.</p> <p>7 Q. Did the fact that the Eber Brothers</p> <p>8 business was owned by the trust affect the way in</p> <p>9 which you managed the Eber Brothers business at</p> <p>10 all?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 A. I reported to the trust.</p> <p>13 Q. So since you were a co-trustee --</p> <p>14 withdrawn.</p> <p>15 Putting aside who you reported to, did</p> <p>16 you understand that you had an obligation to run</p> <p>17 the Eber Brothers business for the benefit of the</p> <p>18 trust beneficiaries?</p> <p>19 MR. RAMSEY: Form.</p> <p>20 A. Could you repeat that question?</p> <p>21 Q. The Eber Brothers business, at the top</p> <p>22 level there was Eber Brothers and Co., Inc.;</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. And is it correct that all of the</p>	<p style="text-align: right;">Page 84</p> <p>1 L. Eber</p> <p>2 MR. RAMSEY: Form.</p> <p>3 A. Yes, I believe so.</p> <p>4 Q. So with respect to the company Eber</p> <p>5 Brothers and Co., Inc., you understood you had a</p> <p>6 fiduciary duty with respect to the trust, your</p> <p>7 sisters and yourself?</p> <p>8 MR. RAMSEY: Form.</p> <p>9 Q. Correct?</p> <p>10 A. Yes.</p> <p>11 Q. And did you understand that when you</p> <p>12 owe fiduciary duties to multiple individuals at</p> <p>13 the same level like that that you are not allowed</p> <p>14 to prefer one individual shareholder over another</p> <p>15 individual shareholder?</p> <p>16 MR. CALIHAN: Objection to form.</p> <p>17 MR. RAMSEY: Form.</p> <p>18 A. I never got into any of this. This is</p> <p>19 something I just did my job with the company and</p> <p>20 reported to the trustees of the trust.</p> <p>21 Q. Was it your understanding that you</p> <p>22 could issue dividends or distributions to some</p> <p>23 shareholders but not others?</p> <p>24 A. I don't understand the question. It's</p> <p>25 is something I never -- I don't have an</p>
<p style="text-align: right;">Page 83</p> <p>1 L. Eber</p> <p>2 shares of that business, at least all the voting</p> <p>3 shares, were controlled by the Allen Eber trust?</p> <p>4 A. Yes.</p> <p>5 Q. And is it your understanding that it</p> <p>6 is the voting common shareholders to whom a</p> <p>7 corporate officer owes a primary duty of care?</p> <p>8 MR. RAMSEY: Form.</p> <p>9 A. I don't have an answer for you on</p> <p>10 that. I don't know.</p> <p>11 Q. Who are the other shareholders in Eber</p> <p>12 Brothers and Co., Inc. besides the Allen Eber</p> <p>13 Trust?</p> <p>14 A. There was common non-voting stock was</p> <p>15 owned by myself and my sisters.</p> <p>16 Q. Did anyone else own Eber Brothers and</p> <p>17 Co., Inc. stock?</p> <p>18 A. No.</p> <p>19 Q. Did you have any understanding as to</p> <p>20 whether -- withdrawn.</p> <p>21 So you did understand that as a</p> <p>22 corporate officer and a director you had a</p> <p>23 fiduciary duty towards the shareholders of the</p> <p>24 company; correct?</p> <p>25 MR. CALIHAN: Objection to form.</p>	<p style="text-align: right;">Page 85</p> <p>1 L. Eber</p> <p>2 understanding of what you are asking.</p> <p>3 Q. In terms of Eber Brothers and Co.,</p> <p>4 Inc., that held the stock of other Eber Brothers</p> <p>5 entities; correct?</p> <p>6 A. Yes.</p> <p>7 Q. Which entities did it control?</p> <p>8 A. Whatever ones that were there at the</p> <p>9 time.</p> <p>10 Q. So that included Eber Brothers Wine</p> <p>11 and Liquor Corp.; correct?</p> <p>12 A. Yes.</p> <p>13 Q. Were there other businesses such as a</p> <p>14 framing business?</p> <p>15 A. No.</p> <p>16 Q. Or --</p> <p>17 A. The produce business.</p> <p>18 Q. Produce business.</p> <p>19 What was that called?</p> <p>20 A. Eber and Co.</p> <p>21 Q. When did Eber and Co. stop operations?</p> <p>22 A. Eber and Co. was a produce business.</p> <p>23 Stopped quite a few years ago. I don't have the</p> <p>24 date.</p> <p>25 Q. Did you ever work for that produce</p>

<p style="text-align: right;">Page 86</p> <p>1 L. Eber</p> <p>2 business?</p> <p>3 A. Yes.</p> <p>4 Q. When was that?</p> <p>5 A. In high school and college.</p> <p>6 Q. Was it still operating at the time</p> <p>7 that you graduated from college?</p> <p>8 A. Yes.</p> <p>9 Q. Who managed that?</p> <p>10 A. Audrey Hays' father.</p> <p>11 Q. What was his name?</p> <p>12 A. Darwin Boslov, B-O-S-L-O-V.</p> <p>13 Q. So not likely a creationist?</p> <p>14 A. What?</p> <p>15 Q. Bad joke.</p> <p>16 Returning to Eber Brothers Wine and</p> <p>17 Liquor Corp., you were the president of that</p> <p>18 entity; correct?</p> <p>19 A. Eventually.</p> <p>20 Q. And what was your position with</p> <p>21 respect to Eber Brothers and Co., Inc. at the same</p> <p>22 time you were president of Eber Brothers Wine and</p> <p>23 Liquor Corp.?</p> <p>24 A. I was president of that too.</p> <p>25 Q. Besides Eber Brothers and Co., Inc.,</p>	<p style="text-align: right;">Page 88</p> <p>1 L. Eber</p> <p>2 as president of Eber Brothers Wine and Liquor</p> <p>3 Corp.; correct?</p> <p>4 A. Yes.</p> <p>5 Q. But you remained president of Eber</p> <p>6 Brothers and Co., Inc.?</p> <p>7 A. Yeah, it's possible. I don't</p> <p>8 remember. There are a lot of companies. It can</p> <p>9 get confusing.</p> <p>10 Q. What is your current position with</p> <p>11 Eber Brothers and Co., Inc.?</p> <p>12 A. My current position with Eber Brothers</p> <p>13 and Co.? I could be a director. I don't remember</p> <p>14 what else. The company actually there are so many</p> <p>15 of them it confuses me. I would have to look at</p> <p>16 what it actually is.</p> <p>17 Q. Other than yourself, do you recall</p> <p>18 anyone else whoever served as president of Eber</p> <p>19 Brothers and Co., Inc.?</p> <p>20 A. It's possible there could be somebody</p> <p>21 else.</p> <p>22 Q. What is Wendy's position with Eber</p> <p>23 Brothers and Co., Inc.?</p> <p>24 A. She may be president of it.</p> <p>25 Q. When is the last time there was any</p>
<p style="text-align: right;">Page 87</p> <p>1 L. Eber</p> <p>2 were there any other shareholders in Eber Brothers</p> <p>3 Wine and Liquor Corp. when you were president of</p> <p>4 it?</p> <p>5 A. Not that I remember.</p> <p>6 Q. So as president of Eber Brothers Wine</p> <p>7 and Liquor Corp. you understood that your</p> <p>8 fiduciary duties to the shareholders ran to</p> <p>9 ultimately the Allen Eber Trust; correct?</p> <p>10 MR. RAMSEY: Form.</p> <p>11 A. I reported to the Allen Eber Trust.</p> <p>12 Q. And Eber Brothers Wine and Liquor</p> <p>13 Corp. in turn opened all of the shares in Eber</p> <p>14 Brothers Wine and Liquor Metro Inc. once that was</p> <p>15 created in the nineties; correct?</p> <p>16 A. I don't remember. It's possible, but</p> <p>17 I don't remember.</p> <p>18 Q. Are there any Eber Brothers entities</p> <p>19 that were owned or at one point controlled by Eber</p> <p>20 Brothers and Co., Inc., where you did not believe</p> <p>21 that you had fiduciary duties to the beneficiaries</p> <p>22 of the trust?</p> <p>23 MR. RAMSEY: Form.</p> <p>24 A. No.</p> <p>25 Q. At some point you ended up resigning</p>	<p style="text-align: right;">Page 89</p> <p>1 L. Eber</p> <p>2 kind of election of either officers or directors</p> <p>3 for Eber Brothers and Co., Inc.?</p> <p>4 A. I don't remember.</p> <p>5 Q. Why did you resign as president of</p> <p>6 Eber Brothers Wine and Liquor Corp.?</p> <p>7 A. Because it didn't see -- it didn't --</p> <p>8 there was nothing for me to do in Eber Wine and</p> <p>9 Liquor Corp. anymore. I was working for Southern</p> <p>10 in New York and then I was involved in Eber</p> <p>11 Connecticut.</p> <p>12 Q. Did someone replace you as president</p> <p>13 of Eber Brothers Wine and Liquor Corp.?</p> <p>14 A. I believe so.</p> <p>15 Q. Who was that?</p> <p>16 A. It could be Wendy Eber. I don't</p> <p>17 remember.</p> <p>18 Q. Well, if there was nothing for you to</p> <p>19 do, was there something for Wendy Eber to do?</p> <p>20 A. Yes.</p> <p>21 MR. RAMSEY: Form.</p> <p>22 Q. What was that?</p> <p>23 A. She has a very strong financial</p> <p>24 background and there were a lot of problems there</p> <p>25 and she was very capable in relating to solving</p>

<p style="text-align: right;">Page 90</p> <p>1 L. Eber</p> <p>2 those problems and dealing with regulatory</p> <p>3 agencies and moneys that were owed and different</p> <p>4 things that were thrown against the company.</p> <p>5 Q. Which regulatory agencies are you</p> <p>6 referring to?</p> <p>7 A. Anyone that would -- any financial</p> <p>8 ones that would be involved in any business. No</p> <p>9 one in particular but there are different agencies</p> <p>10 that any business confronts with.</p> <p>11 Q. So there was no particular regulatory</p> <p>12 agency or governmental or quasi governmental body</p> <p>13 that you were specifically referring to when you</p> <p>14 said that Wendy would need to interact with them</p> <p>15 as president of the Eber Brothers Wine and Liquor</p> <p>16 Corp.?</p> <p>17 A. Well, you know the problems the</p> <p>18 company had with the past Pension Benefit</p> <p>19 Guarantee Corporation.</p> <p>20 Q. So that's one.</p> <p>21 A. And whatever other ones in different</p> <p>22 situations that the company was faced with.</p> <p>23 Q. What was the situation with Pension</p> <p>24 Benefit Guarantee Corp.?</p> <p>25 A. That Eber Brothers had a defined</p>	<p style="text-align: right;">Page 92</p> <p>1 L. Eber</p> <p>2 that PBGC would be placing a lien on corporate</p> <p>3 assets?</p> <p>4 A. No.</p> <p>5 Q. So as of 2012, did you expect that</p> <p>6 Eber Brothers would be able to continue making the</p> <p>7 payments due to PBGC?</p> <p>8 A. The money wasn't there. You know we</p> <p>9 tried to resolve it. It was a legacy that doesn't</p> <p>10 go away. If you know the ERISA laws there is no</p> <p>11 way out of it.</p> <p>12 Q. Did you try to find a way out of it?</p> <p>13 A. Yes.</p> <p>14 Q. What was that?</p> <p>15 A. Hired legal counsels that specialize</p> <p>16 in it who I paid personally.</p> <p>17 Q. Which counsel is that?</p> <p>18 A. Groom in Washington, D.C.</p> <p>19 Q. Anyone else?</p> <p>20 A. With the PBGC you are talking about?</p> <p>21 Q. Yes, to help get out of the ERISA laws</p> <p>22 as you said.</p> <p>23 A. We hired a law firm. They have a</p> <p>24 branch in Rochester. Hourihan, he was the lawyer</p> <p>25 on it.</p>
<p style="text-align: right;">Page 91</p> <p>1 L. Eber</p> <p>2 benefit pension plan going back to 1950s and after</p> <p>3 they couldn't afford to make the payments and so</p> <p>4 the Pension Benefit Guarantee Corporation put the</p> <p>5 company in default under the ERISA laws and we had</p> <p>6 a deal with it.</p> <p>7 Q. When was the default that you just</p> <p>8 referred to?</p> <p>9 A. I don't have the exact -- I don't</p> <p>10 remember the exact date.</p> <p>11 Q. By default do you mean place the lien</p> <p>12 against the corporate assets?</p> <p>13 A. Yes.</p> <p>14 Q. Yes?</p> <p>15 A. Yes.</p> <p>16 Q. When did that occur?</p> <p>17 A. I don't remember the exact date.</p> <p>18 Q. Was it in approximately 2014?</p> <p>19 A. It could have been. If you have it</p> <p>20 there. I can't remember these dates. I am glad I</p> <p>21 remember what I did yesterday.</p> <p>22 Q. So your resignation was in 2012 to the</p> <p>23 best of your recollection; correct?</p> <p>24 A. Yes.</p> <p>25 Q. So as of 2012 were you anticipating</p>	<p style="text-align: right;">Page 93</p> <p>1 L. Eber</p> <p>2 Q. Is this the Bond --</p> <p>3 A. Bond Schoeneck, thank you.</p> <p>4 Q. Any other lawyers that you hired?</p> <p>5 A. I don't remember. It's possible, but</p> <p>6 I don't remember.</p> <p>7 Q. Do you recognize the name Glenn Sturm?</p> <p>8 A. Yes.</p> <p>9 Q. Who is he?</p> <p>10 A. A lawyer.</p> <p>11 Q. Is he a lawyer who you hired?</p> <p>12 A. No.</p> <p>13 Q. Who hired Glenn Sturm?</p> <p>14 A. Well, I met him and he was hired, he</p> <p>15 was hired. I would say I was involved in hiring</p> <p>16 him. I correct that, and my daughter Wendy.</p> <p>17 Q. And for what purpose was he hired?</p> <p>18 A. To help Eber Connecticut out of dire</p> <p>19 financial straights.</p> <p>20 Q. How specifically was Glenn Sturm</p> <p>21 qualified to do that?</p> <p>22 A. He was a partner, senior partner of</p> <p>23 Mullins something in Atlanta. Very well</p> <p>24 respected. Had done a lot in turnaround companies</p> <p>25 and was going to -- did help us in navigating</p>

<p style="text-align: right;">Page 94</p> <p>1 L. Eber</p> <p>2 through a very difficult financial period.</p> <p>3 Q. How were you introduced to Glenn</p> <p>4 Sturm?</p> <p>5 A. I met him in a restaurant.</p> <p>6 Q. Where was that?</p> <p>7 A. In New Haven.</p> <p>8 Q. When was that?</p> <p>9 A. I don't have the date.</p> <p>10 Q. Was it years before you had hired him</p> <p>11 or shortly beforehand?</p> <p>12 A. Shortly before we hired him.</p> <p>13 Q. And what kinds of things did Glenn</p> <p>14 Sturm advise you about in terms of the subject</p> <p>15 matter?</p> <p>16 A. Tried to get us bank loans. Brought</p> <p>17 in consultants to help streamline the company.</p> <p>18 Talk to our management. Education. Had an</p> <p>19 excellent legal background and everything.</p> <p>20 Q. Did he advise you or the companies</p> <p>21 concerning their debts and trying to get out of</p> <p>22 some of the debts that were owed to other third</p> <p>23 parties like PBGC?</p> <p>24 MR. RAMSEY: Form.</p> <p>25 A. He did advise us on debt and how to</p>	<p style="text-align: right;">Page 96</p> <p>1 L. Eber</p> <p>2 Mullins; is that right?</p> <p>3 A. I believe so. I can't remember the</p> <p>4 exact but he was working on his own at some point.</p> <p>5 Q. And once he was working on his own,</p> <p>6 how was the topic of selling him a piece of the</p> <p>7 company broached?</p> <p>8 A. I don't know. I don't remember. I</p> <p>9 was not involved in that.</p> <p>10 Q. Who was?</p> <p>11 A. I would say my daughter Wendy.</p> <p>12 MR. RAMSEY: When you get to a good</p> <p>13 place Brian to take five minutes.</p> <p>14 MR. BROOK: We can do that, sure.</p> <p>15 THE VIDEOGRAPHER: This marks the end</p> <p>16 of media unit two in the videotaped</p> <p>17 deposition of Lester Eber. We are going off</p> <p>18 the record. Time is 11:32.</p> <p>19 (Recess taken.)</p> <p>20 THE VIDEOGRAPHER: This marks the</p> <p>21 beginning of media unit number three in the</p> <p>22 videotaped deposition of Lester Eber. We</p> <p>23 are going on the record. The time is 11:45.</p> <p>24 BY MR. BROOK:</p> <p>25 Q. Mr. Eber, when did you decide to cut</p>
<p style="text-align: right;">Page 95</p> <p>1 L. Eber</p> <p>2 restructure the company to make it look more</p> <p>3 attractive to banks so we could borrow money.</p> <p>4 Q. And what were some of the ways in</p> <p>5 which the company was restructured?</p> <p>6 A. I don't actually remember the actual</p> <p>7 restructuring.</p> <p>8 Q. Was part of the restructuring included</p> <p>9 in the sale of six percent of Eber Connecticut to</p> <p>10 Polebridge Bowman?</p> <p>11 A. I think the six percent to him was</p> <p>12 that he wanted to get paid. And it was a way to</p> <p>13 pay him and the company didn't have any money to</p> <p>14 pay him.</p> <p>15 Q. He was associated as a partner with a</p> <p>16 law firm Nelson Mullins; correct?</p> <p>17 A. Yes.</p> <p>18 Q. Wasn't he paid through payments to his</p> <p>19 law firm?</p> <p>20 A. There were payments to his law firm</p> <p>21 originally and then he -- I don't know what</p> <p>22 happened between he and his law firm. He went</p> <p>23 more on and off on his own.</p> <p>24 Q. So it was your understanding that</p> <p>25 while he was doing work for you he left Nelson</p>	<p style="text-align: right;">Page 97</p> <p>1 L. Eber</p> <p>2 your sister, nieces and nephew out of the family</p> <p>3 business?</p> <p>4 MR. RAMSEY: Form.</p> <p>5 A. I didn't.</p> <p>6 Q. What do you mean by that?</p> <p>7 A. I didn't decide to cut anyone out of</p> <p>8 the family business.</p> <p>9 Q. Didn't you take actions that cut your</p> <p>10 sister, nieces and nephew out of the family</p> <p>11 business?</p> <p>12 MR. RAMSEY: Form.</p> <p>13 A. I didn't look at it that way. I did</p> <p>14 what would save a company from going into</p> <p>15 liquidation.</p> <p>16 Q. How did and -- withdrawn.</p> <p>17 What did you do to save the company</p> <p>18 from going into liquidation that you were just</p> <p>19 referring to?</p> <p>20 A. I have personally paid legal and other</p> <p>21 expenses that I was not personally liable for to</p> <p>22 keep the company viable that were legacy costs</p> <p>23 that were shoved -- that were Eber Connecticut was</p> <p>24 obligated to. You have a list of all of them.</p> <p>25 Q. How did those cash infusions give you</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 L. Eber</p> <p>2 the right to take control of the business for</p> <p>3 yourself?</p> <p>4 MR. RAMSEY: Form.</p> <p>5 A. That wasn't -- the cash infusions kept</p> <p>6 the company alive. If I didn't do that there</p> <p>7 wouldn't be a company to talk about today.</p> <p>8 Q. But you never at the time when you</p> <p>9 agreed to make the cash infusions, you never said</p> <p>10 if I do this I get to own the company, do I?</p> <p>11 A. I never -- I just did what had to be</p> <p>12 done to keep the company alive and if I hadn't had</p> <p>13 done it there wouldn't be a company today.</p> <p>14 Q. Is it your understanding that when</p> <p>15 someone loans money to a company that person has</p> <p>16 the right to take over the company in the event of</p> <p>17 nonpayment?</p> <p>18 MR. RAMSEY: Form.</p> <p>19 A. All I know is if you loan money you</p> <p>20 got to secure the loan so you can get your money</p> <p>21 back.</p> <p>22 Q. And is that what you did when you</p> <p>23 loaned money to Eber Brothers?</p> <p>24 A. I eventually did that.</p> <p>25 Q. So when you say you know when you owe</p>	<p style="text-align: right;">Page 100</p> <p>1 L. Eber</p> <p>2 A. It's a amended and restated promissory</p> <p>3 note from the company.</p> <p>4 Q. So this is Eber Brothers Wine and</p> <p>5 Liquor Corp. promising to pay you; correct?</p> <p>6 A. Yes.</p> <p>7 Q. And who authorized this promissory</p> <p>8 note on behalf of Eber Brothers Wine and Liquor</p> <p>9 Corp.?</p> <p>10 A. I would imagine it is John Ryan, chief</p> <p>11 financial officer.</p> <p>12 Q. And you also signed on behalf of Eber</p> <p>13 Brothers Wine and Liquor Corp.?</p> <p>14 A. Yes.</p> <p>15 Q. And you also signed this document on</p> <p>16 behalf of yourself?</p> <p>17 A. Yes.</p> <p>18 Q. Now on the first page, do you see</p> <p>19 there is some handwritten amendments?</p> <p>20 A. Yes.</p> <p>21 Q. And the handwritten amendments</p> <p>22 increased the interest rate from six percent to</p> <p>23 nine percent?</p> <p>24 A. Yes.</p> <p>25 Q. And it looks like are those your</p>
<p style="text-align: right;">Page 99</p> <p>1 L. Eber</p> <p>2 money you have to secure the loan, at what point</p> <p>3 did you come to know that?</p> <p>4 A. It was always something that as a</p> <p>5 businessman that if you are lending money you got</p> <p>6 to handle the companies in desperate situations</p> <p>7 facing liquidation, you have to protect your, the</p> <p>8 money you have lent.</p> <p>9 Q. When did you secure any of your loans</p> <p>10 with Eber Brothers?</p> <p>11 A. I don't remember the exact dates.</p> <p>12 MR. BROOK: Let's mark this as</p> <p>13 Plaintiffs' Exhibit 30.</p> <p>14 (Plaintiffs' Exhibit 30, a document</p> <p>15 entitled Amended and Restated Promissory</p> <p>16 Note bearing Bates numbers EB 00031310</p> <p>17 through 311, marked for identification, as</p> <p>18 of this date.)</p> <p>19 Q. I am showing you what has been marked</p> <p>20 as Plaintiffs' Exhibit 30. It is a document</p> <p>21 entitled Amended and Restated Promissory Note</p> <p>22 bearing Bates numbers EB 00031310 through 311.</p> <p>23 Do you recognize this document?</p> <p>24 A. Yes.</p> <p>25 Q. What is it?</p>	<p style="text-align: right;">Page 101</p> <p>1 L. Eber</p> <p>2 initials by that?</p> <p>3 A. Yes.</p> <p>4 Q. But John Ryan's initials don't appear</p> <p>5 next to those changes, do they?</p> <p>6 A. I didn't see them.</p> <p>7 Q. Did John Ryan approve those changes?</p> <p>8 A. I would imagine he had to approve them</p> <p>9 and it is very possible there was a lawyer</p> <p>10 involved in this. Would probably be Pat Dalton</p> <p>11 that suggested this.</p> <p>12 Q. Do you actually remember John Ryan</p> <p>13 approving increasing the interest rate by 50</p> <p>14 percent?</p> <p>15 A. No.</p> <p>16 Q. When did the change to the interest</p> <p>17 rate occur?</p> <p>18 A. I don't remember.</p> <p>19 Q. This note, which is dated March 13,</p> <p>20 2006, that is not a secured promissory note;</p> <p>21 correct?</p> <p>22 A. If that's what you say it is. I</p> <p>23 haven't had a chance to read it.</p> <p>24 Q. Do you have any recollection of</p> <p>25 securing your 2006 promissory note?</p>

<p style="text-align: right;">Page 102</p> <p>1 L. Eber</p> <p>2 A. No.</p> <p>3 Q. Let's go to Exhibit 13 which we used</p> <p>4 yesterday. That is a line of credit note with a</p> <p>5 date in the upper right-hand corner of October</p> <p>6 blank 2009.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And this is a note that was issued by</p> <p>10 Eber Brothers Wine and Liquor Metro Inc.; correct?</p> <p>11 A. Yes.</p> <p>12 Q. If you look on page 3 you see it was</p> <p>13 authorized again by you and also Wendy Eber on</p> <p>14 behalf of Eber Metro?</p> <p>15 A. Yes.</p> <p>16 Q. Was this note something that was</p> <p>17 secured at the time that you executed it?</p> <p>18 A. I haven't had a chance to read this.</p> <p>19 I don't know. It probably wasn't.</p> <p>20 Q. And as you sit here today, do you have</p> <p>21 any recollection of insisting that you would not</p> <p>22 loan more money to the company unless you got a</p> <p>23 security agreement?</p> <p>24 A. No, I don't remember saying that. I</p> <p>25 did whatever I had to to keep the company alive.</p>	<p style="text-align: right;">Page 104</p> <p>1 L. Eber</p> <p>2 Q. So why did the Eber companies sign the</p> <p>3 security agreement?</p> <p>4 MR. RAMSEY: Form.</p> <p>5 A. The companies were in desperate</p> <p>6 condition and could have been liquidated and it is</p> <p>7 normal to ask for security in those circumstances.</p> <p>8 Q. Are you saying it is normal to ask for</p> <p>9 security for a loan after the loan has already</p> <p>10 been executed?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 A. As I told you before, I did whatever I</p> <p>13 had to to keep the companies alive and not be</p> <p>14 liquidated. There isn't a time to say it is</p> <p>15 secured or not. You got to do it to keep the</p> <p>16 company working, being able to run a business or</p> <p>17 there wouldn't be a company.</p> <p>18 Q. Who drafted the security agreement?</p> <p>19 A. I don't remember.</p> <p>20 Q. Was legal counsel retained for either</p> <p>21 side of this transaction?</p> <p>22 A. Very -- yeah. I would say yes.</p> <p>23 Q. Who was legal counsel?</p> <p>24 A. It would probably have been Pat</p> <p>25 Dalton.</p>
<p style="text-align: right;">Page 103</p> <p>1 L. Eber</p> <p>2 Q. So now let's take a look at Exhibit</p> <p>3 15. This is the security agreement entered into</p> <p>4 as of February 26, 2010.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Do you remember this agreement?</p> <p>8 A. Yes. I don't remember the details of</p> <p>9 it but I do remember the agreement.</p> <p>10 Q. Why did you enter into the security</p> <p>11 agreement with Eber Brothers Metro and Eber</p> <p>12 Brothers Wine and Liquor Corp.?</p> <p>13 A. To protect my loans.</p> <p>14 Q. What did the Eber companies get out of</p> <p>15 this?</p> <p>16 MR. RAMSEY: Form.</p> <p>17 A. What did the Eber companies get out of</p> <p>18 it? They were kept alive by my loans.</p> <p>19 Q. But you already agreed to make loans,</p> <p>20 hadn't you?</p> <p>21 A. Yes, I had. Yes.</p> <p>22 Q. And you made those loans without</p> <p>23 requiring security; correct?</p> <p>24 A. That's correct.</p> <p>25 MR. RAMSEY: Form.</p>	<p style="text-align: right;">Page 105</p> <p>1 L. Eber</p> <p>2 Q. Do you specifically remember Pat</p> <p>3 Dalton working on this?</p> <p>4 A. I can't remember, but that's who it</p> <p>5 probably would have been.</p> <p>6 Q. Do you remember when the billing</p> <p>7 dispute between Eber Brothers and Pat Dalton</p> <p>8 began?</p> <p>9 A. Not the exact date of it.</p> <p>10 Q. Was it in approximately 2009 or '10?</p> <p>11 A. I don't think it was then. I can't</p> <p>12 remember. I don't remember the dates.</p> <p>13 Q. Did Glenn Sturm draft this agreement?</p> <p>14 A. He could have.</p> <p>15 Q. Let's look at one more document that</p> <p>16 we covered yesterday. Here we go. Exhibit 16</p> <p>17 this is another copy of the line of credit note</p> <p>18 but you may remember this from yesterday's</p> <p>19 testimony. On the upper right-hand corner it says</p> <p>20 the date is February 26, 2010.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Do you remember this version of the</p> <p>24 line of credit note?</p> <p>25 A. This one my signature is on it but I</p>

27 (Pages 102 - 105)

<p style="text-align: right;">Page 106</p> <p>1 L. Eber</p> <p>2 don't remember it.</p> <p>3 Q. So you don't remember why you signed</p> <p>4 the same line of credit note with two different</p> <p>5 dates?</p> <p>6 A. No.</p> <p>7 Q. When did -- let's look at either one</p> <p>8 of the line of credit notes either Exhibit 13 or</p> <p>9 16. Take your pick. I think the terms are all</p> <p>10 the same except for the date.</p> <p>11 MR. RAMSEY: Do you have 16 in front</p> <p>12 of you? Look at this (indicating).</p> <p>13 Q. Do you see at the bottom of paragraph</p> <p>14 3 it says in the final sentence that "The maturity</p> <p>15 date is defined as December 31, 2011."?</p> <p>16 A. Yes.</p> <p>17 Q. What is your understanding of what the</p> <p>18 maturity date means with respect to a line of</p> <p>19 credit note?</p> <p>20 A. That it has to be paid then.</p> <p>21 Q. And how was the maturity date for this</p> <p>22 line of credit note determined?</p> <p>23 A. I do not know.</p> <p>24 Q. Did you think that it was realistic as</p> <p>25 of February 2010 to expect Eber Metro or Eber</p>	<p style="text-align: right;">Page 108</p> <p>1 L. Eber</p> <p>2 your bank account.</p> <p>3 Q. At the time of approximately 2010</p> <p>4 through 2012, was Eber Brothers Wine and Liquor</p> <p>5 Corp. a solvent company?</p> <p>6 A. Wine and Liquor, I don't know what --</p> <p>7 I don't think they were solvent. I think they</p> <p>8 were struggling.</p> <p>9 Q. Did you have any understanding of what</p> <p>10 additional fiduciary duties a corporate executive</p> <p>11 has at a time period when a company is in the zone</p> <p>12 of insolvency?</p> <p>13 MR. RAMSEY: Form.</p> <p>14 A. I reported to the trust. They were</p> <p>15 aware of everything that went on. I did the best</p> <p>16 I could to keep above water.</p> <p>17 Q. Why did you create the company</p> <p>18 Alexbay?</p> <p>19 A. It was at the suggestion of my</p> <p>20 lawyers.</p> <p>21 Q. Which lawyers?</p> <p>22 A. Would have been David Beltz and there</p> <p>23 is another one. I cannot think of the other.</p> <p>24 Q. Who is David Beltz?</p> <p>25 A. He was a lawyer that advised me in</p>
<p style="text-align: right;">Page 107</p> <p>1 L. Eber</p> <p>2 Brothers and Co., Inc. to be able to pay 1.5</p> <p>3 million dollars plus interest within less than two</p> <p>4 years?</p> <p>5 MR. RAMSEY: Form.</p> <p>6 A. I did not draft this. I was involved</p> <p>7 in keeping the company in business. That was my</p> <p>8 priority. I was not involved in drafting this.</p> <p>9 Q. How does taking Eber Brothers Metro</p> <p>10 shares away from Eber Brothers Wine and Liquor</p> <p>11 Corp. and putting it into your own company an</p> <p>12 action that helps keep the company in business?</p> <p>13 MR. RAMSEY: Form.</p> <p>14 A. It restructures the company, cleans up</p> <p>15 the statement and turns a debt into an asset for a</p> <p>16 bank. So you can go -- because the company</p> <p>17 couldn't get a loan. It couldn't get any loans</p> <p>18 from anyone. So this cleans up the balance sheet</p> <p>19 and makes it as an asset instead of a debt.</p> <p>20 Q. So you wanted to transfer the company</p> <p>21 out from underneath the debts owed by Eber</p> <p>22 Brothers Wine and Liquor Corp.; correct?</p> <p>23 A. I wanted to get a bank loan for the</p> <p>24 company. You know in our business you have to pay</p> <p>25 the suppliers. They transfer the money out of</p>	<p style="text-align: right;">Page 109</p> <p>1 L. Eber</p> <p>2 Connecticut.</p> <p>3 Q. And why did he say that you should</p> <p>4 create the Alexbay company?</p> <p>5 MR. RAMSEY: Hold on. Just be careful</p> <p>6 you are not infringing on any conversation</p> <p>7 you had. The action he ultimately took you</p> <p>8 can testify about that. I don't want you</p> <p>9 testifying to any conversations you had with</p> <p>10 Mr. Beltz.</p> <p>11 Q. What was the purpose -- I understand</p> <p>12 that you created the company because a lawyer told</p> <p>13 you to do it, but what was the purpose you</p> <p>14 intended to have the company Alexbay serve?</p> <p>15 A. A personal holding company.</p> <p>16 Q. What did you want to hold when you</p> <p>17 created it?</p> <p>18 A. Whatever that had to be, that was, an</p> <p>19 investment that I would make.</p> <p>20 Q. Were you thinking of any specific</p> <p>21 investments at the time you created it?</p> <p>22 A. You know, I at the time I don't</p> <p>23 remember what but it was a personal LLC that I</p> <p>24 created that was created for me.</p> <p>25 Q. Do you remember when you created it?</p>

<p style="text-align: right;">Page 110</p> <p>1 L. Eber</p> <p>2 A. I don't remember the date.</p> <p>3 Q. Let's mark this next exhibit</p> <p>4 Plaintiffs' Exhibit 31.</p> <p>5 (Plaintiffs' Exhibit 31, a copy of</p> <p>6 two printouts made on October 1, 2016 from</p> <p>7 the Connecticut Department of State</p> <p>8 concerning the business Alexbay LLC, marked</p> <p>9 for identification, as of this date.)</p> <p>10 Q. Plaintiffs' Exhibit 31 in front of you</p> <p>11 is a copy of two printouts made on October 1, 2016</p> <p>12 from the Connecticut Department of State</p> <p>13 concerning the business Alexbay LLC.</p> <p>14 Do you see it on the first page it</p> <p>15 states the date of incorporation/registration as</p> <p>16 December 8, 2011? It is the fifth line down.</p> <p>17 A. Yes.</p> <p>18 Q. And is that consistent with your</p> <p>19 recollection of when you created the company?</p> <p>20 A. I would believe so.</p> <p>21 Q. What was the original name that you</p> <p>22 had for your company?</p> <p>23 A. Lester Eber LLC.</p> <p>24 Q. Why did you change the name?</p> <p>25 A. There were enough Eber -- a lot of</p>	<p style="text-align: right;">Page 112</p> <p>1 L. Eber</p> <p>2 A. Eber Connecticut, yes.</p> <p>3 Q. And here is a document previously</p> <p>4 marked Exhibit Plaintiffs' 8.</p> <p>5 A. Yes.</p> <p>6 Q. This is an affidavit that was signed</p> <p>7 by you under oath on December 8, 2011; correct?</p> <p>8 A. Yes.</p> <p>9 Q. What was the purpose of this</p> <p>10 affidavit?</p> <p>11 A. It's a law that any transfer of stock</p> <p>12 or change in ownership of stock has to be reported</p> <p>13 to the Consumer Protection Agency in Connecticut.</p> <p>14 Q. So as of December 8, 2011 you had</p> <p>15 already decided to take Eber Connecticut and put</p> <p>16 it in Alexbay in some way; correct?</p> <p>17 MR. RAMSEY: Form.</p> <p>18 A. I don't remember the date.</p> <p>19 Q. This affidavit is dated December 8th;</p> <p>20 correct?</p> <p>21 A. Yeah.</p> <p>22 Q. And this states item number 4 or let's</p> <p>23 start with item number 3. 3 says "Presently 79</p> <p>24 percent of Eber Connecticut is owned by me through</p> <p>25 an entity known as Eber Metro.</p>
<p style="text-align: right;">Page 111</p> <p>1 L. Eber</p> <p>2 Ebers. Just too much confusion. I think it</p> <p>3 needed a separate name.</p> <p>4 Q. How did you arrive at the Alexbay LLC</p> <p>5 name?</p> <p>6 A. There were other names that I tried</p> <p>7 but they were taken in the state of Connecticut</p> <p>8 and I go up there in the summertime and I didn't</p> <p>9 think anyone would probably use that name.</p> <p>10 Alexandria Bay is in upstate New York on the</p> <p>11 Canadian border.</p> <p>12 Q. It is named after Alexandria Bay?</p> <p>13 A. Yes.</p> <p>14 Q. Is that a place that you visited?</p> <p>15 A. In the summer, yes.</p> <p>16 Q. So is it -- having seen the date when</p> <p>17 Alexbay which was then called Lester Eber LLC was</p> <p>18 created, does that refresh your recollection as to</p> <p>19 what particular investments or other holdings you</p> <p>20 wanted to have held by the company?</p> <p>21 MR. RAMSEY: Form.</p> <p>22 A. Yeah. I think it would be for the</p> <p>23 investment. Would be the investment in</p> <p>24 Connecticut.</p> <p>25 Q. You mean Eber Connecticut?</p>	<p style="text-align: right;">Page 113</p> <p>1 L. Eber</p> <p>2 4, I wish to transfer all of that 79</p> <p>3 percent that I own from Eber Metro to Lester Eber</p> <p>4 LLC, an entity which will also be wholly owned by</p> <p>5 me.</p> <p>6 5, this transfer is being done for no</p> <p>7 consideration and that it is being done strictly</p> <p>8 for organizational purposes. No money or other</p> <p>9 consideration will change hands."</p> <p>10 Did I read that correctly?</p> <p>11 A. Yes.</p> <p>12 Q. As of December 8, 2011 you had decided</p> <p>13 to take Eber Connecticut and have it be held by</p> <p>14 Lester Eber LLC; correct?</p> <p>15 MR. RAMSEY: Form.</p> <p>16 A. Yes.</p> <p>17 Q. Had any of the debt to you been</p> <p>18 defaulted on at that point?</p> <p>19 A. Hadn't been defaulted. Hadn't been</p> <p>20 paid either. There was no way of it being paid.</p> <p>21 Q. So you were still president of Eber</p> <p>22 Wine and Liquor and Eber Metro at that point;</p> <p>23 correct?</p> <p>24 A. Eber Metro but I don't know about Eber</p> <p>25 Wine and Liquor.</p>

<p style="text-align: right;">Page 114</p> <p>1 L. Eber</p> <p>2 Q. Eber Metro had assumed all the debt to</p> <p>3 you; correct?</p> <p>4 A. Yes.</p> <p>5 Q. And so as president of Eber Metro</p> <p>6 weren't you obligated to try or -- withdrawn.</p> <p>7 Was it your understanding that as</p> <p>8 president of Eber Metro you had an obligation to</p> <p>9 attempt to either pay outstanding debts that were</p> <p>10 coming due or to renegotiate the terms of those</p> <p>11 debts to avoid default?</p> <p>12 MR. RAMSEY: Form.</p> <p>13 A. I don't understand the question. You</p> <p>14 got me confused.</p> <p>15 Q. As the president of a company, do you</p> <p>16 want to see that company be liquidated?</p> <p>17 MR. RAMSEY: Form.</p> <p>18 A. I did everything possible to stop a</p> <p>19 liquidation.</p> <p>20 Q. And isn't the liquidation something</p> <p>21 that is often times a result of a default on a</p> <p>22 large amount of debt?</p> <p>23 A. Yes.</p> <p>24 Q. And as a secured lender at that point</p> <p>25 of Eber Metro, you had the right to require a</p>	<p style="text-align: right;">Page 116</p> <p>1 L. Eber</p> <p>2 A. I had asked my sister and my niece to</p> <p>3 contribute money and they both declined.</p> <p>4 Q. When did you ask them to contribute</p> <p>5 money?</p> <p>6 A. I don't have the exact date, but I</p> <p>7 did. There are letters that we submitted that</p> <p>8 prove it.</p> <p>9 Q. Does the timing of April 2010 sound</p> <p>10 correct for when he sent those letters?</p> <p>11 A. You probably have them here. So</p> <p>12 that's what it is. I don't remember that date.</p> <p>13 2010, can you remember?</p> <p>14 Q. Unfortunately yes, but --</p> <p>15 A. Good.</p> <p>16 Q. -- it is -- do you have any</p> <p>17 recollection of after those letters were sent to</p> <p>18 your sister and your niece ever raising the topic</p> <p>19 again with them about putting money into the</p> <p>20 Connecticut business?</p> <p>21 A. Yes.</p> <p>22 Q. When was that?</p> <p>23 A. I don't remember the date but I will</p> <p>24 let you know what my sister said. She said I want</p> <p>25 to get money out. I don't want to put money in.</p>
<p style="text-align: right;">Page 115</p> <p>1 L. Eber</p> <p>2 liquidation of the company if it went into</p> <p>3 default; correct?</p> <p>4 A. That's what it says. I don't know</p> <p>5 what -- I don't know the law of what you are</p> <p>6 talking about. So the only thing I knew was that</p> <p>7 I had to keep -- I had invested a lot of money. I</p> <p>8 continue to invest money and if I hadn't invested</p> <p>9 money there would have been no Eber Connecticut</p> <p>10 and what I did here was to clean up the statement</p> <p>11 to make it look taking debt and making it into</p> <p>12 assets so a bank would want to give us a loan.</p> <p>13 When Wells Fargo left us we were nowhere's. We</p> <p>14 had nothing. They put a workout team in our</p> <p>15 company and we were desperate and I personally</p> <p>16 lent enough money to keep this company, the last</p> <p>17 vestige afloat and paid legal fees and everything</p> <p>18 personally to do it. You got all those copies.</p> <p>19 MR. RAMSEY: You answered the</p> <p>20 question.</p> <p>21 Q. Why didn't you create an entity that</p> <p>22 rather than being held entirely by you was held by</p> <p>23 the Allen Eber Trust and transfer the company into</p> <p>24 that new entity?</p> <p>25 MR. RAMSEY: Form.</p>	<p style="text-align: right;">Page 117</p> <p>1 L. Eber</p> <p>2 Q. And when did she say that?</p> <p>3 A. I don't remember the date.</p> <p>4 Q. Was it around the time when you sent</p> <p>5 her the letter?</p> <p>6 A. It could have been and then later on.</p> <p>7 I don't have the dates.</p> <p>8 Q. Did you ever tell your sister that if</p> <p>9 she didn't put money in that you were going to</p> <p>10 take it away from the trust?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 A. No, I didn't say that to her.</p> <p>13 Q. Why not?</p> <p>14 A. Because it wasn't that desperate a</p> <p>15 situation. I did it when the company, it became</p> <p>16 desperate that if I didn't put the money in no one</p> <p>17 else was going to put it in and there wouldn't be</p> <p>18 a company.</p> <p>19 Q. How do you know if no one else was</p> <p>20 going to put money in if they knew what was at</p> <p>21 stake was the continuation of the family business</p> <p>22 under the family trust?</p> <p>23 MR. RAMSEY: Form.</p> <p>24 A. They both refused and had no interest</p> <p>25 in putting any money into the company.</p>

<p style="text-align: right;">Page 118</p> <p>1 L. Eber</p> <p>2 Q. But you never told them of the</p> <p>3 possibility that if they did not put money in they</p> <p>4 would lose their interest in the family business;</p> <p>5 correct?</p> <p>6 MR. RAMSEY: Form. Asked and</p> <p>7 answered.</p> <p>8 Go ahead. You can answer it again.</p> <p>9 MR. BROOK: It was asked but not</p> <p>10 answered.</p> <p>11 A. I don't remember saying that to them.</p> <p>12 Q. Do you know anyone else who talked</p> <p>13 with your sister or your niece about the need to</p> <p>14 put money into the family business in 2010 or</p> <p>15 2011?</p> <p>16 A. I don't know.</p> <p>17 Q. Looking at Exhibit 8 in front of you,</p> <p>18 you signed that based upon your own knowledge and</p> <p>19 belief it says at the top; right?</p> <p>20 A. Yes.</p> <p>21 Q. So and this was also something where</p> <p>22 you made the statement or made the affidavit under</p> <p>23 penalty of false statement; correct?</p> <p>24 A. Yes.</p> <p>25 Q. So you understood that it was a</p>	<p style="text-align: right;">Page 120</p> <p>1 L. Eber</p> <p>2 is that you wish to transfer that 79 percent from</p> <p>3 Eber Metro to Lester Eber LLC.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. So isn't it true that actually this</p> <p>7 affidavit was written at a time when Eber</p> <p>8 Connecticut was still ultimately or 79 percent of</p> <p>9 Eber Connecticut was owned by the trust?</p> <p>10 MR. RAMSEY: Form.</p> <p>11 A. I don't understand what you -- I just</p> <p>12 don't understand what you are saying here.</p> <p>13 Q. You agree with me that if Eber Metro</p> <p>14 was still an entity that was owned and controlled</p> <p>15 by the trust, then the statement in item number</p> <p>16 three would not be correct?</p> <p>17 MR. RAMSEY: Form.</p> <p>18 A. Could you repeat that?</p> <p>19 (Record read.)</p> <p>20 A. That's correct.</p> <p>21 Q. Now item number 4 emphasizes that by</p> <p>22 saying that Lester Eber LLC is an entity which</p> <p>23 will also be wholly owned by me.</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 119</p> <p>1 L. Eber</p> <p>2 statement being made under oath like your</p> <p>3 testimony today?</p> <p>4 A. Yes.</p> <p>5 Q. So you knew how important it was to</p> <p>6 tell the truth?</p> <p>7 A. Yes.</p> <p>8 Q. The whole truth; correct?</p> <p>9 MR. RAMSEY: Form.</p> <p>10 A. Yes.</p> <p>11 Q. And nothing but the truth; correct?</p> <p>12 MR. RAMSEY: Form.</p> <p>13 A. Yes.</p> <p>14 Q. So item 3 you wrote in this affidavit</p> <p>15 "Presently 79 percent of Eber Connecticut is owned</p> <p>16 by me through an entity known as Eber Metro."</p> <p>17 Was that a true statement?</p> <p>18 MR. RAMSEY: Form.</p> <p>19 A. If that's what I said at the time and</p> <p>20 signed it, yes.</p> <p>21 Q. So it is your understanding that at</p> <p>22 the time that you signed this Eber Connecticut or</p> <p>23 Eber Metro was not owned by the trust?</p> <p>24 A. Yes.</p> <p>25 Q. And you said that item number 4 though</p>	<p style="text-align: right;">Page 121</p> <p>1 L. Eber</p> <p>2 Q. So you were making it clear that you</p> <p>3 were telling the recipient of this affidavit that</p> <p>4 Eber Metro was wholly owned by you; correct?</p> <p>5 MR. RAMSEY: Form.</p> <p>6 A. Yes.</p> <p>7 Q. And you said in item number 5 "This</p> <p>8 transfer is being done for no consideration."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. What did you mean by that?</p> <p>12 A. It is whatever it says. No</p> <p>13 consideration.</p> <p>14 Q. So no consideration means nothing is</p> <p>15 being received by Eber Metro in return for giving</p> <p>16 up the 79 percent of Eber Connecticut; is that</p> <p>17 right?</p> <p>18 MR. RAMSEY: Form.</p> <p>19 A. I didn't write this and I would have</p> <p>20 to talk to whoever did write this to explain it to</p> <p>21 me.</p> <p>22 Q. Who wrote this?</p> <p>23 A. I think it's probably something that</p> <p>24 the Consumer Protection Agency of The State of</p> <p>25 Connecticut required.</p>

<p style="text-align: right;">Page 122</p> <p>1 L. Eber</p> <p>2 Q. That doesn't answer who wrote this.</p> <p>3 A. I don't know.</p> <p>4 Q. So was it true that you wanted to</p> <p>5 transfer the 79 percent of Eber Connecticut to</p> <p>6 Lester Eber LLC for no consideration?</p> <p>7 MR. RAMSEY: Form.</p> <p>8 A. I can't explain that to you.</p> <p>9 Q. Let's jump ahead in time for a little</p> <p>10 bit here to late 2016 through 2017.</p> <p>11 Around the time when this lawsuit was</p> <p>12 first filed and months afterwards, do you recall</p> <p>13 that at that point you sought to acquire all of</p> <p>14 the shares of Eber Brothers and Co., Inc. from the</p> <p>15 Allen Eber Trust?</p> <p>16 A. Yeah. I believe so.</p> <p>17 Q. What did you offer to provide to the</p> <p>18 Allen Eber Trust in exchange for that?</p> <p>19 A. I don't remember the transaction. I</p> <p>20 was not -- I was aware of it but I was not</p> <p>21 actually into the details of it.</p> <p>22 Q. Did you have any lawyer who was</p> <p>23 helping you try to acquire Eber Brothers and Co.,</p> <p>24 Inc.?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 124</p> <p>1 L. Eber</p> <p>2 Q. You yourself were a co-trustee of the</p> <p>3 trust; correct?</p> <p>4 A. Yes.</p> <p>5 Q. So why didn't you just transfer the</p> <p>6 stock to yourself?</p> <p>7 A. I didn't do it.</p> <p>8 Q. Why not?</p> <p>9 A. I just didn't. I don't have an answer</p> <p>10 for you.</p> <p>11 Q. Did you think that you had the power</p> <p>12 or authority to do that?</p> <p>13 A. I don't know. It's possible I did. I</p> <p>14 just didn't do it.</p> <p>15 MR. BROOK: I think this next segment</p> <p>16 is going to be best done on one continuous</p> <p>17 whole. So why don't we go ahead and break</p> <p>18 for lunch right now.</p> <p>19 THE VIDEOGRAPHER: We are going off</p> <p>20 the record. The time is 12:20.</p> <p>21 (Luncheon recess: 12:20 p.m.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 123</p> <p>1 L. Eber</p> <p>2 Q. Who was that?</p> <p>3 A. John Herbert.</p> <p>4 Q. Anyone else?</p> <p>5 A. I believe he was the lawyer.</p> <p>6 Q. Who is Jim Vazzana?</p> <p>7 A. Yes. He is trust and estate lawyer.</p> <p>8 Q. Is he a lawyer that you hired?</p> <p>9 A. Yes.</p> <p>10 Q. To represent you individually?</p> <p>11 A. Yes.</p> <p>12 Q. And did you also ask him to help you</p> <p>13 acquire the stock of Eber Brothers and Co., Inc.?</p> <p>14 A. I believe so at one time.</p> <p>15 Q. Why did you want the Eber Brothers and</p> <p>16 Co., Inc. stock at that time?</p> <p>17 A. You know, I just don't remember the</p> <p>18 details of it.</p> <p>19 Q. But you asked for the stock on</p> <p>20 multiple occasions; correct?</p> <p>21 A. I believe so, yes.</p> <p>22 Q. And let's -- withdrawn.</p> <p>23 Who was it that you were asking to</p> <p>24 authorize the transfer of the stock?</p> <p>25 A. I don't understand the question.</p>	<p style="text-align: right;">Page 125</p> <p>1 L. Eber</p> <p>2 A F T E R N O O N S E S S I O N .</p> <p>3 (12:57 p.m.)</p> <p>4 L E S T E R E B E R ,</p> <p>5 having been previously sworn, resumed the</p> <p>6 stand and testified further as follows:</p> <p>7 EXAMINATION (Cont'd)</p> <p>8 BY MR. BROOK:</p> <p>9 THE VIDEOGRAPHER: We are going back</p> <p>10 on the record. The time is 12:59.</p> <p>11 Q. After breaking for lunch Mr. Eber,</p> <p>12 were you able to get some food?</p> <p>13 A. Yes.</p> <p>14 Q. And are you feeling okay to continue</p> <p>15 this deposition?</p> <p>16 A. Yes.</p> <p>17 Q. Any reason at all you can think of why</p> <p>18 you wouldn't be able to provide full and truthful</p> <p>19 testimony?</p> <p>20 A. No.</p> <p>21 Q. After this lawsuit was filed, did you</p> <p>22 become aware of the plans by your co-trustee</p> <p>23 Canandaigua National Bank and Trust to seek a</p> <p>24 judicial order terminating the trust?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 126</p> <p>1 L. Eber</p> <p>2 Q. How did you find out about that?</p> <p>3 A. I believe my lawyer Vazzana told me</p> <p>4 about it.</p> <p>5 Q. Did you know about that before it was</p> <p>6 filed in the court?</p> <p>7 A. No.</p> <p>8 Q. And so you appointed Mr. Vazzana to be</p> <p>9 your lawyer for that court proceeding; correct?</p> <p>10 A. Yes.</p> <p>11 Q. Had he represented you on anything</p> <p>12 before then?</p> <p>13 A. Yes.</p> <p>14 Q. What?</p> <p>15 A. Personal issues.</p> <p>16 Q. How long had he been representing you</p> <p>17 for personal issues?</p> <p>18 A. I don't remember. Could have been a</p> <p>19 couple of years. I don't remember.</p> <p>20 Q. Did any of those personal issues</p> <p>21 concern the Allen Eber Trust?</p> <p>22 A. No.</p> <p>23 Q. What was your understanding of what</p> <p>24 would happen with the assets or what was going to</p> <p>25 happen with the assets of the Allen Eber Trust if</p>	<p style="text-align: right;">Page 128</p> <p>1 L. Eber</p> <p>2 of the assets?</p> <p>3 A. No.</p> <p>4 Q. And you understood that the assets</p> <p>5 included the trust stock in Eber Brothers and Co.,</p> <p>6 Inc.; correct?</p> <p>7 MR. RAMSEY: Form.</p> <p>8 A. You know, I think that was</p> <p>9 questionable. I can't give you an answer on that.</p> <p>10 I don't know.</p> <p>11 Q. What was questionable about that?</p> <p>12 A. I don't know of the status of what the</p> <p>13 stock was or wasn't and I think that would be a</p> <p>14 question you would have to ask my lawyer.</p> <p>15 MR. BROOK: Let's mark this as the</p> <p>16 next exhibit Plaintiffs' 32.</p> <p>17 (Plaintiffs' Exhibit 32, a letter</p> <p>18 and some attachments that are dated July 12,</p> <p>19 2017 from Rita Nischal of Canandaigua</p> <p>20 National Bank and Trust to Lester Eber,</p> <p>21 marked for identification, as of this date.)</p> <p>22 MR. BROOK: Go ahead and do 33 as</p> <p>23 well.</p> <p>24 (Plaintiffs' Exhibit 33, a order in</p> <p>25 the Surrogates Court of The State of New</p>
<p style="text-align: right;">Page 127</p> <p>1 L. Eber</p> <p>2 Canandaigua National Bank had been successful in</p> <p>3 terminating the trust?</p> <p>4 A. Never would happen with the</p> <p>5 disbursement of the trust. You know, whatever the</p> <p>6 procedure was. I didn't know.</p> <p>7 Q. You didn't know what would happen with</p> <p>8 the assets?</p> <p>9 A. The assets would be distributed among</p> <p>10 the trustees. Not the trustees. The</p> <p>11 beneficiaries, excuse me.</p> <p>12 Q. How would the percentages or amounts</p> <p>13 of distribution be determined?</p> <p>14 A. By the percentage of the trustees.</p> <p>15 You know, there were -- not the trustees. Excuse</p> <p>16 me, by the beneficiaries divided three ways which</p> <p>17 would also Danny and his sister would split one of</p> <p>18 the thirds.</p> <p>19 Q. So it was going to be divided into</p> <p>20 thirds between one third going to you, one third</p> <p>21 going to Audrey Hays and one third being split</p> <p>22 between Lisa Stein and Dan Kleeberg; is that</p> <p>23 right?</p> <p>24 A. Yes.</p> <p>25 Q. And did you oppose that distribution</p>	<p style="text-align: right;">Page 129</p> <p>1 L. Eber</p> <p>2 York in Monroe County dated June 1, 2017</p> <p>3 signed by Surrogate Judge John M. Owens,</p> <p>4 marked for identification, as of this date.)</p> <p>5 Q. You have Exhibits 32 and 33 in front</p> <p>6 of you. Exhibit 32 is a letter and some</p> <p>7 attachments that are dated July 12, 2017 from Rita</p> <p>8 Nischal, N-I-S-C-H-A-L, of Canandaigua National</p> <p>9 Bank and Trust to Lester Eber.</p> <p>10 And Exhibit 33 is a order in the</p> <p>11 Surrogates Court of The State of New York in</p> <p>12 Monroe County dated June 1, 2017 signed by</p> <p>13 Surrogate Judge John M. Owens.</p> <p>14 Have you seen either or both of these</p> <p>15 documents before Mr. Eber?</p> <p>16 A. Yes.</p> <p>17 Q. When did you see the judicial order</p> <p>18 Exhibit 33?</p> <p>19 A. I don't remember.</p> <p>20 Q. Was it around the time that the order</p> <p>21 was entered?</p> <p>22 A. It was whenever my lawyer sent it to</p> <p>23 me.</p> <p>24 Q. And do you have any reason to doubt</p> <p>25 that your lawyer sent it to you promptly after</p>

<p style="text-align: right;">Page 130</p> <p>1 L. Eber</p> <p>2 receiving it himself?</p> <p>3 A. No.</p> <p>4 Q. And Exhibit 32, when did you see that?</p> <p>5 A. I saw it when it was sent to me. It</p> <p>6 is July 12th. So whenever that time period.</p> <p>7 Q. Did you review the documents that were</p> <p>8 enclosed with it?</p> <p>9 A. Yes.</p> <p>10 Q. Look at page 2 of this exhibit.</p> <p>11 It says receipt and release in the</p> <p>12 upper right-hand corner?</p> <p>13 A. Yes.</p> <p>14 Q. Did you ever sign a receipt and</p> <p>15 release for Canandaigua National Bank?</p> <p>16 A. You know, I don't think I did, but I</p> <p>17 could have. I don't remember.</p> <p>18 Q. Take a look at page 3.</p> <p>19 You see it is a table saying residuary</p> <p>20 TUW Allen Eber proposed distribution?</p> <p>21 A. Yes.</p> <p>22 Q. And you saw that too; correct?</p> <p>23 A. Yes.</p> <p>24 Q. And so you saw presumably that listed</p> <p>25 on the assets here was three line items for Eber</p>	<p style="text-align: right;">Page 132</p> <p>1 L. Eber</p> <p>2 the Allen Eber Trust was distributed to the</p> <p>3 beneficiaries of the trust?</p> <p>4 A. Yes.</p> <p>5 Q. Did you insist that there be certain</p> <p>6 adjustments made to the distribution after you saw</p> <p>7 this chart page 3 of Exhibit 32?</p> <p>8 MR. RAMSEY: Form.</p> <p>9 A. (Indicating.)</p> <p>10 Q. Yes.</p> <p>11 A. I don't remember.</p> <p>12 MR. BROOK: Let's mark this next</p> <p>13 exhibit Plaintiffs' Exhibit 34.</p> <p>14 (Plaintiffs' Exhibit 34, a letter</p> <p>15 and attachments that was produced yesterday</p> <p>16 by Canandaigua National Bank Bates stamped</p> <p>17 CNB-PL 0010 through 12, marked for</p> <p>18 identification, as of this date.)</p> <p>19 Q. Exhibit 34 in front of you is a letter</p> <p>20 and attachments that was produced yesterday by</p> <p>21 Canandaigua National Bank and is Bates stamp by me</p> <p>22 as CNB-PL 0010 through 12.</p> <p>23 Do you recognize this document?</p> <p>24 A. Yes.</p> <p>25 Q. What is it?</p>
<p style="text-align: right;">Page 131</p> <p>1 L. Eber</p> <p>2 Brothers and Co. stock?</p> <p>3 A. Yes.</p> <p>4 Q. And this shows that stock being</p> <p>5 distributed in roughly the proportions you said</p> <p>6 the trust assets should be distributed; correct?</p> <p>7 A. That I had said?</p> <p>8 Q. Well, you previously testified that</p> <p>9 you understood that the distribution would be one</p> <p>10 third to you, one third to Audrey Hays and one</p> <p>11 third split between Dan Kleeberg and Lisa Stein?</p> <p>12 A. Yes.</p> <p>13 Q. And this reflects close to that</p> <p>14 distribution; correct?</p> <p>15 A. Yes.</p> <p>16 Q. Did you have any objection to that</p> <p>17 distribution of shares of Eber Brothers and Co.</p> <p>18 stock as specified in this proposed distribution</p> <p>19 chart?</p> <p>20 A. I don't remember it. I could have.</p> <p>21 There has been some discussion about it, but I</p> <p>22 don't remember what I said or didn't say or what</p> <p>23 our position was.</p> <p>24 Q. It is your understanding ultimately</p> <p>25 the publicly traded stocks and the cash held by</p>	<p style="text-align: right;">Page 133</p> <p>1 L. Eber</p> <p>2 A. It's a letter to Canandaigua Bank</p> <p>3 reducing the money to Lisa Stein from the money</p> <p>4 that was given by the trust to her daughter Erica</p> <p>5 Stein.</p> <p>6 Q. And is this a letter that you asked to</p> <p>7 have sent on your behalf?</p> <p>8 A. I am copied on it. So I was aware of</p> <p>9 it.</p> <p>10 Q. Did you authorize Mr. Vazzana to send</p> <p>11 it?</p> <p>12 A. I was aware of it and I was involved</p> <p>13 in that knew what was going on. I was aware of</p> <p>14 it. That's what I can say to you.</p> <p>15 Q. Were you aware of the letter going out</p> <p>16 before it was sent?</p> <p>17 A. Yes.</p> <p>18 Q. This was not the first letter that was</p> <p>19 sent on your behalf asking Canandaigua National</p> <p>20 Bank to reduce the amount of distribution from the</p> <p>21 trust to Lisa Stein, was it?</p> <p>22 MR. RAMSEY: Form.</p> <p>23 A. No. You are asking questions that</p> <p>24 show in the other letters. So you know the</p> <p>25 answer.</p>

<p style="text-align: right;">Page 134</p> <p>1 L. Eber</p> <p>2 Q. Why did you want the amount of</p> <p>3 distribution from the trust to Lisa Stein reduced</p> <p>4 versus what Canandaigua had proposed?</p> <p>5 A. I believe the reason and you say me, I</p> <p>6 think there were other people involved in this as</p> <p>7 you see who were copied, lawyers, that there was</p> <p>8 money had been given to, from the trust to her</p> <p>9 daughter.</p> <p>10 Q. So you wanted to make sure that only</p> <p>11 the cost of the money being given to Lisa Stein's</p> <p>12 daughter was borne solely by Lisa Stein; is that</p> <p>13 right?</p> <p>14 A. It was for her daughter out of Lisa</p> <p>15 Stein's money, the money that was to go to Lisa</p> <p>16 Stein. The trust, the way I understood it, took</p> <p>17 the money out of Lisa Stein's account.</p> <p>18 Q. And is it your understanding that</p> <p>19 based on your request Canandaigua National Bank</p> <p>20 the amount of the distribution to Lisa Stein was</p> <p>21 reduced in full by the amount that had been paid</p> <p>22 previously to Erica Stein?</p> <p>23 A. Yes.</p> <p>24 Q. And is there any amount of money</p> <p>25 that's still owed back to the other trust</p>	<p style="text-align: right;">Page 136</p> <p>1 L. Eber</p> <p>2 MR. RAMSEY: Form.</p> <p>3 Go ahead.</p> <p>4 A. I believe that it is a legal question</p> <p>5 and I am not a lawyer.</p> <p>6 Q. What was your belief as of July 2017</p> <p>7 about the value of the Eber Brothers and Co., Inc.</p> <p>8 stock?</p> <p>9 MR. RAMSEY: Form.</p> <p>10 A. As I thought it was worthless.</p> <p>11 Q. Why did you believe that?</p> <p>12 A. Because it had no assets. What were</p> <p>13 the assets.</p> <p>14 Q. Why did you want to obtain the shares</p> <p>15 of Eber Brothers and Co., Inc. stock for yourself?</p> <p>16 A. I think, as I told you before, I think</p> <p>17 it is a legal question that you should ask the</p> <p>18 lawyers. I am not capable of answering it.</p> <p>19 Q. Was your goal to try to prevent</p> <p>20 plaintiffs from pursuing their lawsuit against</p> <p>21 you?</p> <p>22 MR. RAMSEY: Form.</p> <p>23 A. I said ask the lawyers. I don't have</p> <p>24 an answer for you.</p> <p>25 MR. BROOK: Let's go to this next</p>
<p style="text-align: right;">Page 135</p> <p>1 L. Eber</p> <p>2 beneficiaries by Lisa Stein?</p> <p>3 A. Not that I know.</p> <p>4 Q. Did you ask the Canandaigua National</p> <p>5 Bank also reduce the number of shares of Eber</p> <p>6 Brothers and Co. Inc. that were distributed to</p> <p>7 Lisa Stein?</p> <p>8 A. Did I, no. I don't remember that. I</p> <p>9 don't remember that, no.</p> <p>10 Q. Can you think of any reason why the</p> <p>11 number of shares that Eber Brothers and Co., Inc.</p> <p>12 should have been reduced, the numbers of shares --</p> <p>13 let me restart this.</p> <p>14 Can you think of any reason why the</p> <p>15 trusts distribution of shares of Eber Brothers and</p> <p>16 Co., Inc. should have been reduced for Lisa Stein</p> <p>17 based upon either the prior distributions to Erica</p> <p>18 Stein or for any other reason?</p> <p>19 MR. RAMSEY: Form.</p> <p>20 A. I think --</p> <p>21 MR. BROOK: I will withdraw that.</p> <p>22 That was still bad.</p> <p>23 Q. So can you think of any reason why the</p> <p>24 trusts distribution of Eber Brothers and Co., Inc.</p> <p>25 shares to Lisa Stein should have been reduced?</p>	<p style="text-align: right;">Page 137</p> <p>1 L. Eber</p> <p>2 Exhibit 35.</p> <p>3 (Plaintiffs' Exhibit 35, a e-mail</p> <p>4 and attachment dated October 31, 2018 sent</p> <p>5 by Paul Keneally with multiple recipients</p> <p>6 CNB-PL 0001 to 2, marked for identification,</p> <p>7 as of this date.)</p> <p>8 Q. Exhibit 35 in front of you is a e-mail</p> <p>9 and attachment dated October 31, 2018 sent by Paul</p> <p>10 Keneally with multiple recipients CNB-PL 0001 to</p> <p>11 2.</p> <p>12 Have you seen this before?</p> <p>13 A. I signed it, so I must have.</p> <p>14 Q. You're referring to the second page of</p> <p>15 the exhibit?</p> <p>16 A. Behind it, yeah.</p> <p>17 Q. So that is your signature?</p> <p>18 A. Yes.</p> <p>19 Q. And do you remember signing this</p> <p>20 document?</p> <p>21 A. I don't remember, but I did sign it.</p> <p>22 Q. How do you know that you signed it if</p> <p>23 you don't remember it?</p> <p>24 A. That's my signature. So nobody is</p> <p>25 putting my -- that's my signature on it.</p>

35 (Pages 134 - 137)

<p style="text-align: right;">Page 138</p> <p>1 L. Eber</p> <p>2 Q. The second page is addressed to the</p> <p>3 Allen Eber Trust care of the Canandaigua National</p> <p>4 Bank and Trust Company; correct?</p> <p>5 A. Yes.</p> <p>6 Q. And it says in all caps below that</p> <p>7 notice of intent to purchase shares; correct?</p> <p>8 A. Yes.</p> <p>9 Q. Then the body of it states "The</p> <p>10 undersigned hereby gives notice of my intent to</p> <p>11 purchase all shares of capital stock of Eber</p> <p>12 Brothers and Co., Inc. defined as the company of</p> <p>13 which the Allen Eber Trust is the registered</p> <p>14 holder that are proposed to be transferred to</p> <p>15 Daniel Kleeberg, Lisa Stein or Audrey Hays</p> <p>16 pursuant to Article 12 of the bylaws of the</p> <p>17 company." Then your signature.</p> <p>18 Did I read that correctly?</p> <p>19 A. Yes.</p> <p>20 Q. What was your purpose in sending this</p> <p>21 notice of intent?</p> <p>22 A. If you look at the bylaws of the</p> <p>23 company I had the right to do it.</p> <p>24 Q. Why do you say that?</p> <p>25 A. Read the bylaws.</p>	<p style="text-align: right;">Page 140</p> <p>1 L. Eber</p> <p>2 A. You have to ask my lawyer.</p> <p>3 Q. So you signed this without knowing how</p> <p>4 much money you were committing to pay?</p> <p>5 MR. RAMSEY: Form.</p> <p>6 A. I signed it. I don't have an answer</p> <p>7 for you on that. I think it's a legal question.</p> <p>8 Q. So for all you know you might need to</p> <p>9 pay the plaintiffs over two million dollars each</p> <p>10 in order to get the shares that you agreed to</p> <p>11 purchase?</p> <p>12 MR. RAMSEY: Form.</p> <p>13 A. No.</p> <p>14 Q. Why do you say no?</p> <p>15 A. Because it isn't worth it.</p> <p>16 Q. Well, why do you say that?</p> <p>17 A. What's the -- where does it show that</p> <p>18 it is worth that kind of money? Can you show</p> <p>19 that?</p> <p>20 Q. Again, if it is not -- if you don't</p> <p>21 know how much the shares are worth, then how can</p> <p>22 you agree to purchase them?</p> <p>23 MR. RAMSEY: Form.</p> <p>24 A. I told you I am not qualified to</p> <p>25 answer your question. Please consult my lawyer.</p>
<p style="text-align: right;">Page 139</p> <p>1 L. Eber</p> <p>2 Q. Did you read the bylaws?</p> <p>3 A. I have.</p> <p>4 Q. And it is your belief that the bylaws</p> <p>5 of the company permitted you to purchase the</p> <p>6 shares of capital stock of Eber Brothers and Co.</p> <p>7 stock?</p> <p>8 A. On the advice of counsel, yes.</p> <p>9 Q. Why did you wait until October 31,</p> <p>10 2018 to send this notice?</p> <p>11 A. Ask my lawyer.</p> <p>12 Q. Now you knew that Canandaigua National</p> <p>13 Bank and Trust Company had proposed to and</p> <p>14 attempted to transfer the Eber Brothers and Co.,</p> <p>15 Inc. shares to Dan Kleeberg, Lisa Stein and Audrey</p> <p>16 Hays a year before this date; correct?</p> <p>17 MR. RAMSEY: Form.</p> <p>18 A. If you are saying that you probably</p> <p>19 have something that shows that. I don't remember.</p> <p>20 Q. And you said here, what you signed</p> <p>21 your name to, you intended to purchase the shares;</p> <p>22 correct?</p> <p>23 A. That's what it says here.</p> <p>24 Q. How much money did you intend to</p> <p>25 purchase the shares for?</p>	<p style="text-align: right;">Page 141</p> <p>1 L. Eber</p> <p>2 Q. So you are authorizing us to ask these</p> <p>3 questions of your lawyer?</p> <p>4 DI MR. RAMSEY: Don't answer that.</p> <p>5 MR. BROOK: I think he already did,</p> <p>6 but I am just trying to make it clear.</p> <p>7 MR. CALIHAN: I don't agree, but.</p> <p>8 MR. BROOK: I know.</p> <p>9 Let's do two more exhibits after that.</p> <p>10 We are up to 36 and 37.</p> <p>11 (Plaintiffs' Exhibit 36, a printout</p> <p>12 of a table with some notes entitled</p> <p>13 Residuary TUW Allen Eber Proposed</p> <p>14 Distribution of Securities, marked for</p> <p>15 identification, as of this date.)</p> <p>16 (Plaintiffs' Exhibit 37, a e-mail</p> <p>17 dated September 15, 2017 sent by Jim Vazzana</p> <p>18 to R. Nischal at CNB, Canandaigua National</p> <p>19 Bank, with yourself as one of the people</p> <p>20 copied on it Bates stamped CNB-PL 0005,</p> <p>21 marked for identification, as of this date.)</p> <p>22 Q. Looking first at Exhibit 36. This is</p> <p>23 a printout of a table with some notes entitled</p> <p>24 Residuary TUW Allen Eber Proposed Distribution of</p> <p>25 Securities.</p>

<p style="text-align: right;">Page 142</p> <p>1 L. Eber</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And have you seen this version of the</p> <p>5 chart before?</p> <p>6 A. Yes.</p> <p>7 Q. When do you recall first seeing this?</p> <p>8 A. I don't remember.</p> <p>9 Q. Do you see that this table also</p> <p>10 includes distribution numbers for the shares of</p> <p>11 Eber Brothers and Co. stock held by the trust?</p> <p>12 A. Yes.</p> <p>13 Q. Do you recall making any objection to</p> <p>14 the distribution proposed in this chart after you</p> <p>15 saw it?</p> <p>16 A. I don't remember.</p> <p>17 Q. After you saw this chart, do you</p> <p>18 recall contacting anyone and saying you wanted to</p> <p>19 buy the shares of Eber Brothers and Co., Inc.</p> <p>20 stock that were proposed to be distributed to</p> <p>21 Daniel Kleeberg, Lisa Stein and Audrey Hays?</p> <p>22 MR. RAMSEY: Form.</p> <p>23 A. I don't remember.</p> <p>24 Q. Please take a look at Exhibit 37 now</p> <p>25 which is a e-mail dated September 15, 2017 sent by</p>	<p style="text-align: right;">Page 144</p> <p>1 L. Eber</p> <p>2 MR. RAMSEY: You can answer that.</p> <p>3 A. Yes.</p> <p>4 Q. And so is it fair to say that as of</p> <p>5 September 15, 2017 you agreed with the proposed</p> <p>6 distribution that Canandaigua National Bank had</p> <p>7 sent to you?</p> <p>8 MR. RAMSEY: Form.</p> <p>9 A. No, I don't. This is only to sign a</p> <p>10 release.</p> <p>11 Q. Okay, so what did you understand to be</p> <p>12 the significance of signing or not signing a</p> <p>13 release?</p> <p>14 A. Whatever liability that would waive or</p> <p>15 what have you.</p> <p>16 MR. BROOK: Let's go to the next</p> <p>17 Exhibit 38.</p> <p>18 (Plaintiffs' Exhibit 38, a letter</p> <p>19 dated October 11, 2017 on letterhead for</p> <p>20 Woods Oviatt Gilman LLP addressed to Jim</p> <p>21 Vazzana and me, marked for identification,</p> <p>22 as of this date.)</p> <p>23 Q. Exhibit 38 is a letter dated October</p> <p>24 11, 2017 on letterhead for Woods Oviatt Gilman LLP</p> <p>25 addressed to Jim Vazzana and me.</p>
<p style="text-align: right;">Page 143</p> <p>1 L. Eber</p> <p>2 Jim Vazzana to R. Nischal at CNB, Canandaigua</p> <p>3 National Bank, with yourself as one of the people</p> <p>4 copied on it Bates stamped CNB-PL 0005.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recognize this e-mail?</p> <p>8 A. I assume I saw it. It was sent. I</p> <p>9 was copied on.</p> <p>10 Q. In this e-mail, which was sent by your</p> <p>11 lawyer, it begins by saying "Dear Rita, as you</p> <p>12 know we represent Lester Eber and he and the other</p> <p>13 beneficiaries are reticent to sign a release and</p> <p>14 receipt as submitted. However, he will sign it</p> <p>15 without the release provision."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. So you had talked to your lawyer about</p> <p>19 signing a receipt prior to him sending this</p> <p>20 e-mail; correct?</p> <p>21 MR. RAMSEY: Well, hold on.</p> <p>22 Don't tell him what you talked to your</p> <p>23 lawyer about.</p> <p>24 Q. Did you authorize your lawyer to send</p> <p>25 this e-mail?</p>	<p style="text-align: right;">Page 145</p> <p>1 L. Eber</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Have you seen this letter before?</p> <p>5 A. You know I don't remember. It doesn't</p> <p>6 show me copied on it, but I could have. I don't</p> <p>7 remember.</p> <p>8 Q. And do you recall seeing that there</p> <p>9 were stock powers that were signed by someone from</p> <p>10 Canandaigua National Bank purporting to transfer</p> <p>11 to you shares in Eber Brothers and Co., Inc.?</p> <p>12 A. Could you repeat the question?</p> <p>13 Q. Sure.</p> <p>14 Do you recall seeing that around the</p> <p>15 time of this letter there were stock powers that</p> <p>16 had been signed by someone from Canandaigua</p> <p>17 National Bank and Trust purporting to transfer</p> <p>18 Eber Brothers and Co., Inc. stock to you?</p> <p>19 A. I don't remember.</p> <p>20 Q. Do you know what stock powers are?</p> <p>21 A. Yes.</p> <p>22 Q. What are stock powers?</p> <p>23 A. The ability to vote the stock.</p> <p>24 Q. And how do the stock powers once</p> <p>25 executed get turned into actual voting rights for</p>

37 (Pages 142 - 145)

<p style="text-align: right;">Page 146</p> <p>1 L. Eber</p> <p>2 the stock?</p> <p>3 A. I don't know.</p> <p>4 Q. Was it your understanding as a result</p> <p>5 of the termination of the Allen Eber Trust and</p> <p>6 distribution of assets by Canandaigua National</p> <p>7 Bank you yourself became a voting common</p> <p>8 shareholder of Eber Brothers and Co., Inc.?</p> <p>9 MR. RAMSEY: Form.</p> <p>10 A. I never -- I don't know. I don't</p> <p>11 remember conversations on that. I just don't</p> <p>12 remember.</p> <p>13 Q. On this document here in this letter</p> <p>14 it refers to copies of stock powers being sent and</p> <p>15 then I will just read the whole paragraph into the</p> <p>16 record so we are all clear. It says "Enclosed</p> <p>17 please find your client's respective copies of the</p> <p>18 stock powers transferring their shares of Eber</p> <p>19 Brothers and Co., Inc. pursuant to Canandaigua</p> <p>20 National Bank and Trust Company's distribution</p> <p>21 schedule. As the bank never had possession of the</p> <p>22 company's stock book or other corporate documents</p> <p>23 and despite requests, the bank has not been</p> <p>24 provided with the same. We were required to</p> <p>25 complete these transfers via these stock powers as</p>	<p style="text-align: right;">Page 148</p> <p>1 L. Eber</p> <p>2 company?</p> <p>3 A. I am not involved. I don't know.</p> <p>4 Q. Whose responsibility was it for Eber</p> <p>5 Brothers and Co., Inc. to take care of the stock</p> <p>6 book registration of stockholders and issuance of</p> <p>7 stock certificates?</p> <p>8 A. I can't remember.</p> <p>9 Q. Do you know where the stock book for</p> <p>10 Eber Brothers and Co., Inc. currently is?</p> <p>11 A. No.</p> <p>12 Q. Is it your understanding that the</p> <p>13 stock book for Eber Brothers and Co., Inc. was</p> <p>14 misplaced for a period of time?</p> <p>15 A. I do not know.</p> <p>16 MR. BROOK: Let's go to the next</p> <p>17 Exhibit 39.</p> <p>18 (Plaintiffs' Exhibit 39, a four-page</p> <p>19 letter dated November 5, 2018 by Paul</p> <p>20 Keneally addressed to Magistrate Judge</p> <p>21 Katherine Parker, marked for identification,</p> <p>22 as of this date.)</p> <p>23 Q. Exhibit 39 is a four-page letter dated</p> <p>24 November 5, 2018 by Paul Keneally addressed to</p> <p>25 Magistrate Judge Katherine Parker.</p>
<p style="text-align: right;">Page 147</p> <p>1 L. Eber</p> <p>2 opposed to issuing new stock certificates. We are</p> <p>3 currently retaining the original stock powers</p> <p>4 which I have affixed to each original stock</p> <p>5 certificate that the bank received when it became</p> <p>6 successor co-trustee. We will continue to do so</p> <p>7 unless and until such time as we are advised as to</p> <p>8 whom these originals should be provided given the</p> <p>9 apparent inability to locate the company's stock</p> <p>10 book and affiliated records. It is my</p> <p>11 understanding that the securities were transferred</p> <p>12 to your client's respective financial institutions</p> <p>13 on September 29th and that the remaining assets</p> <p>14 were electronically transferred last week as</p> <p>15 well."</p> <p>16 Did I read that correctly?</p> <p>17 A. Yes.</p> <p>18 Q. And so do you know what this letter</p> <p>19 was referring to about the apparent inability to</p> <p>20 locate the company's stock book?</p> <p>21 A. What it says there. They couldn't</p> <p>22 find it.</p> <p>23 Q. What is a stock book?</p> <p>24 A. I don't know.</p> <p>25 Q. How does new stock get issued by a</p>	<p style="text-align: right;">Page 149</p> <p>1 L. Eber</p> <p>2 Do you recognize this document?</p> <p>3 A. I don't remember seeing it. Yeah, I</p> <p>4 probably did. I probably was copied and got a</p> <p>5 copy of it. I just don't remember.</p> <p>6 Q. Paul Keneally is the lawyer for you,</p> <p>7 your daughter and the Eber companies in this</p> <p>8 litigation; correct?</p> <p>9 A. Yes.</p> <p>10 Q. And I would like to draw your</p> <p>11 attention to paragraph 3 on this first page. I</p> <p>12 will read it into the record. Mr. Keneally wrote</p> <p>13 to the court in response to a letter by me "It is</p> <p>14 not true that the corporate stock register was</p> <p>15 quote lost. The register is maintained by the</p> <p>16 corporate secretary Wendy Eber who is solely</p> <p>17 responsible for registering valid transfers of</p> <p>18 stock in it. Neither the Allen Eber Trust,</p> <p>19 defined as the trust, nor CNB as one of its</p> <p>20 trustees has any responsibility or role in</p> <p>21 registering stock transfers. The corporate</p> <p>22 secretary never told CNB that the register was</p> <p>23 lost."</p> <p>24 Did you see that?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 150</p> <p>1 L. Eber</p> <p>2 Q. And did you authorize Mr. Keneally to</p> <p>3 make this statement?</p> <p>4 MR. RAMSEY: Form.</p> <p>5 A. He is my lawyer.</p> <p>6 Q. And does that refresh your</p> <p>7 recollection as to whose responsibility it was to</p> <p>8 deal with the stock book and issue stock</p> <p>9 certificates on behalf of Eber Brothers and Co.,</p> <p>10 Inc.?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 A. If that's what he says that's what it</p> <p>13 is. He represents me.</p> <p>14 Q. So do you know how looking back at</p> <p>15 Exhibit 38, do you know why the lawyers for</p> <p>16 Canandaigua National Bank appeared to believe that</p> <p>17 the stock book was not able to be located as of</p> <p>18 October 2017?</p> <p>19 A. No.</p> <p>20 Q. And to the best of your knowledge, has</p> <p>21 Wendy Eber always been in possession of the</p> <p>22 company's stock book?</p> <p>23 MR. RAMSEY: Form.</p> <p>24 A. I don't know.</p> <p>25 MR. BROOK: Let's do two more</p>	<p style="text-align: right;">Page 152</p> <p>1 L. Eber</p> <p>2 daughter Wendy as well as you?</p> <p>3 A. He was my lawyer.</p> <p>4 Q. Now do you see the second paragraph</p> <p>5 here. It refers to first two words say my</p> <p>6 clients.</p> <p>7 Do you see that plural?</p> <p>8 A. Yes.</p> <p>9 Q. Who else --</p> <p>10 A. It would be my daughter.</p> <p>11 Q. I would like to point your attention</p> <p>12 now to the substance of the first paragraph which</p> <p>13 I will also read for the record. "Dear Lorisa, I</p> <p>14 trust you received my e-mail of yesterday</p> <p>15 afternoon regarding your inquiry as to the</p> <p>16 corporate stock book of Eber Brothers and Co.,</p> <p>17 Inc. I am fairly confident that they do not have</p> <p>18 it. However, to be sure, Wendy will be in</p> <p>19 Rochester for the fourth of July weekend and will</p> <p>20 double check."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. So your lawyer told counsel for</p> <p>24 Canandaigua National Bank that you and Wendy could</p> <p>25 not locate the corporate stock book; correct?</p>
<p style="text-align: right;">Page 151</p> <p>1 L. Eber</p> <p>2 exhibits. This is 40 and 41.</p> <p>3 (Plaintiffs' Exhibit 40, a e-mail</p> <p>4 dated June 2, 2017 from Jim Vazzana to</p> <p>5 Lorisa LaRocca Bates number CNB-PL 0022,</p> <p>6 marked for identification, as of this date.)</p> <p>7 (Plaintiffs' Exhibit 41, an e-mail</p> <p>8 dated August 18, 2017 from Jim Vazzana to</p> <p>9 Lorisa LaRocca, marked for identification,</p> <p>10 as of this date.)</p> <p>11 Q. Exhibit 40 is a e-mail dated June 2,</p> <p>12 2017 from Jim Vazzana to Lorisa LaRocca Bates</p> <p>13 number CNB-PL 0022.</p> <p>14 Do you recognize that e-mail?</p> <p>15 MR. RAMSEY: You are not suggesting he</p> <p>16 was copied on it; right?</p> <p>17 MR. BROOK: No.</p> <p>18 A. I'm not. I wasn't copied.</p> <p>19 Q. Nonetheless, are you aware that your</p> <p>20 lawyer sent an e-mail along these lines to Lorisa</p> <p>21 LaRocca who was representing Canandaigua National</p> <p>22 Bank?</p> <p>23 A. You know, I think it's possible. I</p> <p>24 don't remember but it is very possible.</p> <p>25 Q. Was Jim Vazzana representing your</p>	<p style="text-align: right;">Page 153</p> <p>1 L. Eber</p> <p>2 MR. RAMSEY: Form.</p> <p>3 A. I don't remember that. It's very</p> <p>4 confusing and I just don't remember.</p> <p>5 Q. Did you have an understanding as to</p> <p>6 why Canandaigua National Bank wanted the corporate</p> <p>7 stock book?</p> <p>8 A. No.</p> <p>9 Q. Please turn to Exhibit 41 which is an</p> <p>10 e-mail dated August 18, 2017 again from Jim</p> <p>11 Vazzana to Lorisa LaRocca this time with you and</p> <p>12 your daughter Wendy copied on it.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. This has Bates numbers CNB-PL 0006.</p> <p>16 And this e-mail reads "Lorisa, have you or your</p> <p>17 client ever found the stock register on Eber</p> <p>18 Brothers Co. My client indicated in June that she</p> <p>19 would make a special trip to Rochester in July to</p> <p>20 see if she could find them. Please advise."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Do you remember this e-mail?</p> <p>24 A. I got it.</p> <p>25 Q. Do you remember seeing it?</p>

<p style="text-align: right;">Page 250</p> <p>1 L. Eber</p> <p>2 statements value the equity of Eber Connecticut at</p> <p>3 in late 2011 and early 2012?</p> <p>4 A. No.</p> <p>5 Q. Do you think that information is</p> <p>6 material to understanding what the value of Eber</p> <p>7 Connecticut might have been at that time?</p> <p>8 MR. RAMSEY: Form.</p> <p>9 A. I think you would have to ask an</p> <p>10 accountant for that, of that. I can't answer for</p> <p>11 you.</p> <p>12 Q. I want to ask you now about your</p> <p>13 relationship with Mike Gumaer.</p> <p>14 When did you first meet him?</p> <p>15 A. After my father died.</p> <p>16 Q. So you had not interacted with him</p> <p>17 before then?</p> <p>18 A. Never.</p> <p>19 Q. What was the nature of your</p> <p>20 relationship with Mike Gumaer during the first few</p> <p>21 years after your father died?</p> <p>22 A. He worked, I worked very close with</p> <p>23 him. He educated me to the trust and to</p> <p>24 transactions you know in settling an estate, my</p> <p>25 father's estate.</p>	<p style="text-align: right;">Page 252</p> <p>1 L. Eber</p> <p>2 Gumaer's legal advice.</p> <p>3 A. A will.</p> <p>4 Q. Did you pay him anything for that?</p> <p>5 A. I don't remember if he could have sent</p> <p>6 me to someone else in his firm that charged me for</p> <p>7 it.</p> <p>8 Q. Was Mr. Gumaer compensated for his</p> <p>9 role as a co-trustee of the trust?</p> <p>10 A. He didn't take any money from the</p> <p>11 trust. He was paid by the company and the reason</p> <p>12 he didn't take any money from the trust because it</p> <p>13 would have reduced the income to the beneficiaries</p> <p>14 of the trust. So he was paid by the company.</p> <p>15 Q. Was there ever any sort of</p> <p>16 documentation where Mr. Gumaer agreed to waive his</p> <p>17 right to compensation as a director, I meant a</p> <p>18 trustee? I am correcting myself.</p> <p>19 A. I don't believe so. In my father's</p> <p>20 will I waived my compensation as an executor of</p> <p>21 his estate.</p> <p>22 Q. What do you mean you waived?</p> <p>23 A. I served for free where the other</p> <p>24 executors, the bank and Mr. Gumaer, were paid, you</p> <p>25 know, whatever the law was.</p>
<p style="text-align: right;">Page 251</p> <p>1 L. Eber</p> <p>2 Q. At any point in time or -- withdrawn.</p> <p>3 At that time Mike Gumaer was a partner</p> <p>4 in the law firm of Nelson Hargrave.</p> <p>5 A. Nixon.</p> <p>6 Q. Nixon Hargrave?</p> <p>7 A. Yes.</p> <p>8 Q. Did you or Eber Brothers retain him as</p> <p>9 a lawyer for the company?</p> <p>10 A. Yes.</p> <p>11 Q. Did you ever retain him as your</p> <p>12 personal attorney?</p> <p>13 A. I used him as a personal attorney.</p> <p>14 Q. When did you start doing that?</p> <p>15 A. After my father died.</p> <p>16 Q. What kinds of things did you retain</p> <p>17 him for?</p> <p>18 A. He advised me legally. Send me</p> <p>19 different law specialists in his firm or what have</p> <p>20 you. Everything. Anything I had I needed a legal</p> <p>21 opinion on I would go through him.</p> <p>22 Q. And for personal matters?</p> <p>23 A. Both personal and business, yes.</p> <p>24 Q. So for personal matters give an</p> <p>25 example of something where you relied on Mr.</p>	<p style="text-align: right;">Page 253</p> <p>1 L. Eber</p> <p>2 Q. Was that your decision to serve for</p> <p>3 free?</p> <p>4 A. It was my father's wish and I observed</p> <p>5 it.</p> <p>6 Q. When did Mr. Gumaer retire from Nixon</p> <p>7 Hargrave or Nixon Peabody as it became?</p> <p>8 MR. CALIHAN: Objection to form.</p> <p>9 A. It is in there. I don't remember the</p> <p>10 date.</p> <p>11 MR. BROOK: What's the basis for the</p> <p>12 objection?</p> <p>13 MR. CALIHAN: I am not sure which</p> <p>14 relationship with the firm you are referring</p> <p>15 to. I think there were several but I am</p> <p>16 not --</p> <p>17 MR. BROOK: Understood.</p> <p>18 A. Thank you.</p> <p>19 MR. BROOK: Let's go to another</p> <p>20 exhibit. This is 47.</p> <p>21 (Plaintiffs' Exhibit 47, a two-page</p> <p>22 letter on the letterhead for Elliot W.</p> <p>23 Gumaer, Jr. dated January 2, 2001 Bates</p> <p>24 stamped January 8, 2001 and Bates number EB</p> <p>25 00001556 to 57, marked for identification,</p>

<p style="text-align: right;">Page 190</p> <p>1 L. Eber</p> <p>2 any debts that were owed directly by Eber</p> <p>3 Connecticut; correct?</p> <p>4 MR. RAMSEY: Form.</p> <p>5 A. I don't -- I can't give you an answer.</p> <p>6 I don't -- I would like to give you an answer but</p> <p>7 I don't have an answer for you.</p> <p>8 Q. So was it your understanding that Eber</p> <p>9 Connecticut was weighed down by the debt of Eber</p> <p>10 Brothers Wine and Liquor Corp.?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 A. Eber Wine and Liquor Corp. yeah, it</p> <p>13 could have -- it didn't help it. If it cleaned up</p> <p>14 the debt and made a cleaner statement so we could</p> <p>15 go to a bank and they could lend us money based on</p> <p>16 the inventory or receivables of Connecticut.</p> <p>17 Q. And what were the debts that Eber</p> <p>18 Brothers Wine and Liquor Corp. had at the time</p> <p>19 that you were trying to clean up the balance</p> <p>20 sheet?</p> <p>21 A. I don't remember.</p> <p>22 Q. There was PBGC; right?</p> <p>23 A. Yes.</p> <p>24 Q. There was the Teamsters?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 192</p> <p>1 L. Eber</p> <p>2 Q. Exhibit 44 is a copy of a summons and</p> <p>3 complaint dated February 21, 2012 bearing Bates</p> <p>4 number KSH 00070 through 83.</p> <p>5 Do you recognize this document?</p> <p>6 A. Yes.</p> <p>7 Q. What is it?</p> <p>8 A. It is summons before a State Supreme</p> <p>9 Court. It is on an action for the foreclosure.</p> <p>10 Q. Who is the listed plaintiff here?</p> <p>11 A. Alexbay.</p> <p>12 Q. That's your company; right?</p> <p>13 A. Yes.</p> <p>14 Q. Who is the lawsuit against?</p> <p>15 A. Eber Wine and Liquor, Southern Eber</p> <p>16 Wine and Liquor Metro, John Doe et cetera.</p> <p>17 Q. So does this refresh your recollection</p> <p>18 that in February 2012 you did authorize the filing</p> <p>19 of a lawsuit on behalf of Alexbay against Eber</p> <p>20 Brothers Wine and Liquor Corp.?</p> <p>21 A. Yes.</p> <p>22 Q. At the time this lawsuit was filed,</p> <p>23 had you resigned as president of Eber Brothers</p> <p>24 Wine and Liquor Corp.?</p> <p>25 A. I believe so.</p>
<p style="text-align: right;">Page 191</p> <p>1 L. Eber</p> <p>2 Q. There was Harris Beach?</p> <p>3 A. Yes.</p> <p>4 Q. Anyone else?</p> <p>5 A. Benderson.</p> <p>6 Q. What is Benderson?</p> <p>7 A. A real estate company.</p> <p>8 Q. How much was owed to them</p> <p>9 approximately?</p> <p>10 A. It was over two hundred thousand I</p> <p>11 believe at the time.</p> <p>12 Q. Anyone else?</p> <p>13 A. There could have been. I just can't</p> <p>14 remember now.</p> <p>15 Q. At some point in February 2012 you</p> <p>16 through Alexbay filed a lawsuit against Eber</p> <p>17 Brothers Wine and Liquor Corp.; correct?</p> <p>18 A. I don't remember.</p> <p>19 MR. BROOK: Let's go to our next</p> <p>20 exhibit. Up to 44 I think.</p> <p>21 (Plaintiffs' Exhibit 44, a copy of a</p> <p>22 summons and complaint dated February 21,</p> <p>23 2012 bearing Bates number KSH 00070 through</p> <p>24 83, marked for identification, as of this</p> <p>25 date.)</p>	<p style="text-align: right;">Page 193</p> <p>1 L. Eber</p> <p>2 Q. How did you resign? How did you go</p> <p>3 about doing this?</p> <p>4 A. I believe there was a board meeting</p> <p>5 and I submitted my resignation to it. I don't</p> <p>6 actually remember going. You know, how many years</p> <p>7 ago that was. It was when, in 2012 or before</p> <p>8 that.</p> <p>9 Q. It is your recollection that it</p> <p>10 happened at a board meeting; correct?</p> <p>11 A. I believe so, yes. To the best of my</p> <p>12 recollection.</p> <p>13 Q. Do you recall any board meetings of</p> <p>14 Eber Brothers Wine and Liquor Corp. within the two</p> <p>15 or three month period before this document Exhibit</p> <p>16 44 was filed?</p> <p>17 A. I don't remember. You know, it could</p> <p>18 have been at a board meeting. I could have just</p> <p>19 submitted it. Going back I don't remember.</p> <p>20 Q. What do you mean by submitted it, what</p> <p>21 is it?</p> <p>22 A. Submitted a letter of resignation.</p> <p>23 Q. Do you recall ever signing a letter of</p> <p>24 resignation?</p> <p>25 A. I can't remember. I could have, but I</p>

<p style="text-align: right;">Page 194</p> <p>1 L. Eber</p> <p>2 don't remember the whole scenario of what</p> <p>3 happened.</p> <p>4 Q. It had to have been a pretty big deal</p> <p>5 when you resigned as president of your father's</p> <p>6 company; correct?</p> <p>7 MR. CALIHAN: Objection to form.</p> <p>8 MR. RAMSEY: Form.</p> <p>9 Q. Was that an emotional moment for you?</p> <p>10 A. With what we have been through nothing</p> <p>11 is emotional anymore.</p> <p>12 Q. So this was just strictly business; is</p> <p>13 that right?</p> <p>14 MR. RAMSEY: Form.</p> <p>15 Q. You are nodding.</p> <p>16 Is that a yes?</p> <p>17 A. It was part of the nightmare that was</p> <p>18 going on with all these companies and trying to</p> <p>19 keep them from being liquidated to survive.</p> <p>20 Q. What was your understanding as to what</p> <p>21 might cause the business to be liquidated since</p> <p>22 you were afraid of that?</p> <p>23 A. Lack of funds to pay the bills, pay</p> <p>24 the suppliers and you are out.</p> <p>25 Q. So it was your understanding that</p>	<p style="text-align: right;">Page 196</p> <p>1 L. Eber</p> <p>2 National Bank to replace Wells Fargo?</p> <p>3 A. We found them for a small amount. I</p> <p>4 think it was a million five. That wasn't enough.</p> <p>5 We needed more and we needed something that wasn't</p> <p>6 renewed every month or so. We needed somebody to</p> <p>7 give us a commitment and that's why we had to</p> <p>8 clean up the balance sheet to make it look like</p> <p>9 for a bank to want to loan us money.</p> <p>10 Q. Returning to Exhibit 44 in front of</p> <p>11 you.</p> <p>12 Did you review this before it was</p> <p>13 filed?</p> <p>14 A. I don't remember, but I must have.</p> <p>15 You know, I can't remember all these things 2012.</p> <p>16 MR. RAMSEY: Just wait for a question.</p> <p>17 Q. So why did you file this lawsuit?</p> <p>18 A. Why did I file what lawsuit?</p> <p>19 Q. The one that we are looking at here</p> <p>20 Exhibit 44.</p> <p>21 A. Oh, the foreclosure?</p> <p>22 Q. Yes.</p> <p>23 MR. CALIHAN: Objection to form.</p> <p>24 MR. RAMSEY: Form.</p> <p>25 A. I filed it to solidify showing that I</p>
<p style="text-align: right;">Page 195</p> <p>1 L. Eber</p> <p>2 there were certain creditors of the company that</p> <p>3 could have forced a liquidation?</p> <p>4 A. Possibly that or we had to get a bank,</p> <p>5 we had to get bank loans. We had to get a bank</p> <p>6 that would give us money to survive because you</p> <p>7 saw early on Wells Fargo foreclosed on it and that</p> <p>8 put us right out of business in New York.</p> <p>9 Q. When was that?</p> <p>10 A. It was in two thousand and what, five,</p> <p>11 six. I don't have the exact date.</p> <p>12 Q. So you are referring to Wells Fargo</p> <p>13 foreclosing on Eber Metro?</p> <p>14 A. On Eber period. All the Eber</p> <p>15 companies.</p> <p>16 Q. Was there actually like a judicial</p> <p>17 proceeding relating to that?</p> <p>18 A. Not that I know of. They just</p> <p>19 notified us that our loan was in default and we</p> <p>20 were in a workout.</p> <p>21 Q. So it was something short of actually</p> <p>22 initiating foreclosure proceedings in court; is</p> <p>23 that right?</p> <p>24 A. I don't remember being in court on it.</p> <p>25 Q. And then you found Canandaigua</p>	<p style="text-align: right;">Page 197</p> <p>1 L. Eber</p> <p>2 wasn't doing anything underhanded. There would be</p> <p>3 a public record of what I had done on advice of</p> <p>4 counsel.</p> <p>5 Q. Which counsel was that?</p> <p>6 A. Michael Beyma.</p> <p>7 Q. And was it your understanding from the</p> <p>8 outset that Eber Wine and Liquor and Eber Metro</p> <p>9 were going to consent to what you requested?</p> <p>10 A. We filed it and it took its course.</p> <p>11 Q. Had you discussed the lawsuit before</p> <p>12 you filed it with Wendy, your daughter?</p> <p>13 A. I probably had a discussion with her</p> <p>14 of it. I don't remember. I was on advice. My</p> <p>15 discussion was with Michael Beyma.</p> <p>16 Q. Was Michael Beyma also representing</p> <p>17 Eber Brothers Wine and Liquor at the time?</p> <p>18 A. I don't think so. I think he just --</p> <p>19 I don't remember. I don't remember that, but I</p> <p>20 remember that's who I worked with the lawyer on</p> <p>21 this. He had another fellow Brueckner, if you</p> <p>22 look at the bottom, who wasn't with them anymore.</p> <p>23 Q. Who paid the legal fees of Michael</p> <p>24 Beyma and Brueckner?</p> <p>25 A. I did.</p>

<p style="text-align: right;">Page 210</p> <p>1 L. Eber</p> <p>2 bearing the caption of Alexbay versus Eber</p> <p>3 Brothers and it states it is the affidavit</p> <p>4 of Lester Eber bearing Bates numbers EB</p> <p>5 00001059 through 1063, marked for</p> <p>6 identification, as of this date.)</p> <p>7 Q. Exhibit 45 is a document bearing the</p> <p>8 caption of Alexbay versus Eber Brothers and it</p> <p>9 states it is the affidavit of Lester Eber bearing</p> <p>10 Bates numbers EB 00001059 through 1063.</p> <p>11 Do you recognize this document?</p> <p>12 A. Yes.</p> <p>13 Q. What is it?</p> <p>14 A. It's an affidavit in support of</p> <p>15 judicial determination for commercial</p> <p>16 reasonableness under UCC 9-627.</p> <p>17 Q. And that's your signature on the last</p> <p>18 page of this document; correct?</p> <p>19 A. Yes.</p> <p>20 Q. It states below your signature that it</p> <p>21 was sworn before a notary public on the 14th day</p> <p>22 of March 2012.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. You understood this was a statement</p>	<p style="text-align: right;">Page 212</p> <p>1 L. Eber</p> <p>2 Q. Based upon your knowledge of the Eber</p> <p>3 Metro, Eber Connecticut business, which sales do</p> <p>4 you think you were referring to?</p> <p>5 A. I don't remember.</p> <p>6 Q. And you can't determine what sales you</p> <p>7 were referring to based upon your knowledge of the</p> <p>8 company?</p> <p>9 A. I just don't remember. It is December</p> <p>10 of 2011.</p> <p>11 Q. Why are you reluctant to state that</p> <p>12 the sales you were referring to were the sales of</p> <p>13 six percent to Polebridge Bowman?</p> <p>14 MR. CALIHAN: Objection to form.</p> <p>15 MR. RAMSEY: Form. That's not what he</p> <p>16 said.</p> <p>17 A. I didn't say that.</p> <p>18 Q. Besides Polebridge Bowman, what other</p> <p>19 sales could you have possibly been referring to?</p> <p>20 A. I don't remember.</p> <p>21 Q. I am not asking you what you remember.</p> <p>22 I am asking you as you sit here today.</p> <p>23 A. I don't know.</p> <p>24 Q. So you can't think of anything else</p> <p>25 you might have been referring to?</p>
<p style="text-align: right;">Page 211</p> <p>1 L. Eber</p> <p>2 under oath like today's deposition; correct?</p> <p>3 A. Yes.</p> <p>4 Q. Did you review this document carefully</p> <p>5 before you signed it?</p> <p>6 A. Yes.</p> <p>7 Q. And you knew that this was a document</p> <p>8 that the court might rely upon in deciding whether</p> <p>9 to find the transaction that you had proposed to</p> <p>10 be commercially reasonable or not; correct?</p> <p>11 A. Yes.</p> <p>12 MR. RAMSEY: Form.</p> <p>13 Q. Please turn to the second page</p> <p>14 paragraph 6.</p> <p>15 Are you there?</p> <p>16 A. Yes.</p> <p>17 Q. That states "Based upon very recent</p> <p>18 arms length sales on the open market, Eber Conn's</p> <p>19 value as a going concern is best established at</p> <p>20 4,633,300 dollars as of December 2011."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. What sales were you referring to in</p> <p>24 that sentence?</p> <p>25 A. I don't know. I don't remember.</p>	<p style="text-align: right;">Page 213</p> <p>1 L. Eber</p> <p>2 MR. RAMSEY: Form.</p> <p>3 A. As I told you, going back to 2011 I</p> <p>4 don't remember.</p> <p>5 Q. How many times has Eber Connecticut,</p> <p>6 how many times has Eber Connecticut membership</p> <p>7 units ever been sold?</p> <p>8 A. The only ones I remember are</p> <p>9 Eder-Goodman and Polebridge Bowman.</p> <p>10 Q. And then besides those two</p> <p>11 transactions, there was also a third transaction</p> <p>12 in which the Polebridge Bowman shares were</p> <p>13 transferred to your daughter; correct?</p> <p>14 A. Yes.</p> <p>15 Q. But that was not a sale; correct?</p> <p>16 A. I am not a lawyer. The lawyers</p> <p>17 handled that and I can't give you an answer to it.</p> <p>18 I think you have to ask a lawyer.</p> <p>19 Q. To your knowledge, did Wendy pay</p> <p>20 anything to Polebridge Bowman to acquire its</p> <p>21 shares?</p> <p>22 MR. RAMSEY: Form.</p> <p>23 A. I do not know. You know, I know the</p> <p>24 transaction took place, but I do not know the</p> <p>25 details of the transaction.</p>

<p style="text-align: right;">Page 254</p> <p>1 L. Eber</p> <p>2 as of this date.)</p> <p>3 Q. Exhibit 47 is a two-page letter on the</p> <p>4 letterhead for Elliot W. Gumaer, Jr. dated January</p> <p>5 2, 2001 Bates stamped January 8, 2001 and Bates</p> <p>6 number EB 00001556 to 57.</p> <p>7 Do you recognize this document?</p> <p>8 A. Yes.</p> <p>9 Q. What is it?</p> <p>10 A. It is a letter from Mike Gumaer to</p> <p>11 myself about his retirement from Nixon Peabody.</p> <p>12 Q. And do you see on the back page there</p> <p>13 is a line below the signature of Mike Gumaer</p> <p>14 stating the terms and conditions of this letter</p> <p>15 are agreed by the Eber companies?</p> <p>16 A. Yes.</p> <p>17 Q. And is that your signature below?</p> <p>18 A. Yes.</p> <p>19 Q. Do you remember signing this document?</p> <p>20 A. I don't remember signing it but I did.</p> <p>21 It is January of '01.</p> <p>22 Q. And when is the last time that you</p> <p>23 remember seeing this document?</p> <p>24 A. I don't remember.</p> <p>25 Q. Do you have any reason to believe that</p>	<p style="text-align: right;">Page 256</p> <p>1 L. Eber</p> <p>2 propose to you the following A, I shall continue</p> <p>3 to waive any direct annual compensation as a</p> <p>4 trustee of the Allen Eber Trust. B, I shall</p> <p>5 continue as a director of the Eber companies</p> <p>6 without any compensation commensurate with my</p> <p>7 responsibilities as a director. And C, I shall</p> <p>8 continue to serve as a consultant to the companies</p> <p>9 and as counsel to you personally and as chief</p> <p>10 executive officer."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. The letter then continues in the next</p> <p>14 paragraph, "As compensation for all of these</p> <p>15 duties the Eber companies will pay me an annual</p> <p>16 consulting fee of forty thousand dollars payable</p> <p>17 quarterly on the first of February, May, August</p> <p>18 and November beginning February 1, 2001. This</p> <p>19 relationship shall remain in place until modified</p> <p>20 by you and me in the manner established by this</p> <p>21 letter."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And you agreed to those terms that he</p> <p>25 proposed?</p>
<p style="text-align: right;">Page 255</p> <p>1 L. Eber</p> <p>2 there are any amendments to this letter agreement?</p> <p>3 A. I don't know. I don't remember. I</p> <p>4 don't know.</p> <p>5 Q. Turning to the second page at the top,</p> <p>6 do you see he, Mike writes "As a director and</p> <p>7 consultant to the companies I have endorsed your</p> <p>8 strategic plan to grow our companies thus enabling</p> <p>9 us to compete in an industry that's changed</p> <p>10 radically over the years since your father's</p> <p>11 death."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know what he meant by referring</p> <p>15 to himself as a consultant to the companies?</p> <p>16 A. Yeah. He was into the business. My</p> <p>17 father put him right into the business to work</p> <p>18 with me and help me.</p> <p>19 Q. So is it fair to say that Mike Gumaer</p> <p>20 did nonlegal work for the companies?</p> <p>21 MR. RAMSEY: Form.</p> <p>22 A. He did legal work. He did consulting.</p> <p>23 He did everything.</p> <p>24 Q. Second paragraph on page 2 reads "With</p> <p>25 the foregoing as historical records I would</p>	<p style="text-align: right;">Page 257</p> <p>1 L. Eber</p> <p>2 A. Yes.</p> <p>3 Q. How long did the annual consulting fee</p> <p>4 of forty thousand dollars continue for?</p> <p>5 A. As long as we could pay it and I don't</p> <p>6 have the date that it changed, but it had to be</p> <p>7 after Wells foreclosed on us and we didn't have</p> <p>8 the money to pay him.</p> <p>9 Q. After that point was his consulting</p> <p>10 fee reduced?</p> <p>11 A. Yes.</p> <p>12 Q. What was it reduced to?</p> <p>13 A. I don't remember.</p> <p>14 MR. BROOK: Let's go to the next</p> <p>15 exhibit. This will be Plaintiffs' Exhibit</p> <p>16 48.</p> <p>17 (Plaintiffs' Exhibit 48, an e-mail</p> <p>18 from Mike Gumaer to Wendy Eber and Lester</p> <p>19 Eber dated October 29, 2013 bearing Bates</p> <p>20 number GUM 000023, marked for</p> <p>21 identification, as of this date.)</p> <p>22 Q. Exhibit 48 is an e-mail from Mike</p> <p>23 Gumaer to Wendy Eber and Lester Eber dated October</p> <p>24 29, 2013 bearing Bates number GUM 000023.</p> <p>25 Do you recognize this document?</p>

65 (Pages 254 - 257)

<p style="text-align: right;">Page 258</p> <p>1 L. Eber</p> <p>2 A. I got it so I do, yes.</p> <p>3 Q. I would like to draw your attention to</p> <p>4 the second paragraph of Mike's e-mail. He writes</p> <p>5 "You will recall I hope our conversation last</p> <p>6 December when I was asked to continue as</p> <p>7 director/trustee/confidant."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. "While I was prepared to conclude my</p> <p>11 relationship after 40 or so years, I was happy to</p> <p>12 continue. My annual compensation for some time</p> <p>13 has been twenty two thousand dollars payable in</p> <p>14 quarterly installments."</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Does that refresh your recollection as</p> <p>18 to what the compensation amount was reduced to</p> <p>19 from forty thousand dollars?</p> <p>20 A. I knew it was reduced but I didn't</p> <p>21 remember the amount.</p> <p>22 Q. And is it your best recollection that</p> <p>23 twenty two thousand dollars was the amount?</p> <p>24 A. It is very possible.</p> <p>25 Q. Which of the Eber companies was</p>	<p style="text-align: right;">Page 260</p> <p>1 L. Eber</p> <p>2 A. Would you repeat that again for me?</p> <p>3 Q. Sure.</p> <p>4 The proposal that Mike had made in</p> <p>5 2001 is that he would --</p> <p>6 A. Yes.</p> <p>7 Q. -- be counsel to you personally --</p> <p>8 A. Yes.</p> <p>9 Q. -- as chief executive officer without</p> <p>10 seeking compensation beyond an annual consulting</p> <p>11 fee of forty thousand dollars?</p> <p>12 A. Yes. That would be consistent.</p> <p>13 Q. To whom did you disclose the terms of</p> <p>14 your engagement of Mike Gumaer pursuant to this</p> <p>15 letter?</p> <p>16 A. To this letter it would be Wendy Eber.</p> <p>17 Q. And were these terms disclosed to</p> <p>18 anyone else?</p> <p>19 A. I don't -- I don't believe so.</p> <p>20 Basically when Eber could have been I don't know.</p> <p>21 I would like you to read the last paragraph.</p> <p>22 Q. You are talking about the last</p> <p>23 paragraph on Exhibit 48?</p> <p>24 A. Yes. You like to read paragraphs. So</p> <p>25 I'd like you to.</p>
<p style="text-align: right;">Page 259</p> <p>1 L. Eber</p> <p>2 responsible for paying Mike Gumaer's consulting</p> <p>3 fee?</p> <p>4 A. Eber Wine and Liquor originally paid</p> <p>5 him.</p> <p>6 Q. And at a certain point was the</p> <p>7 responsibility changed to Eber Connecticut?</p> <p>8 A. Yes.</p> <p>9 Q. What about after the Alexbay</p> <p>10 acquisition of Eber Connecticut, who paid the</p> <p>11 consulting fee then?</p> <p>12 A. I believe -- I don't know. I would</p> <p>13 have to find out. I don't know.</p> <p>14 Q. Is it correct that at some point the</p> <p>15 consulting fee was reduced even more below twenty</p> <p>16 two thousand dollars?</p> <p>17 A. It is very possible.</p> <p>18 Q. Did you ever pay Mike Gumaer directly</p> <p>19 for work that he did as an attorney for you</p> <p>20 personally?</p> <p>21 A. I don't remember. I believe most of</p> <p>22 it was paid through the company.</p> <p>23 Q. And that procedure that you just</p> <p>24 described would be consistent with the proposal</p> <p>25 that Mike made in Exhibit 47; correct?</p>	<p style="text-align: right;">Page 261</p> <p>1 L. Eber</p> <p>2 Q. If you would like to read it aloud I</p> <p>3 will allow you to do so now.</p> <p>4 A. No, you're the --</p> <p>5 MR. RAMSEY: You want to read it go</p> <p>6 ahead.</p> <p>7 A. Yeah. I am taking over your job.</p> <p>8 "I wish to accommodate you two as</p> <p>9 members of a team. Lord knows that Lester has</p> <p>10 committed an incredible amount to bring about the</p> <p>11 company's success. I am prepared to do my share</p> <p>12 if the kitty calls for it. Please give me your</p> <p>13 thoughts. All the best, Mike."</p> <p>14 Q. Do you have an understanding as to</p> <p>15 what Mike meant when he said I am prepared to do</p> <p>16 my share if the kitty calls for it?</p> <p>17 A. I think -- I just think he wants --</p> <p>18 supportive as he can be to help us through a</p> <p>19 difficult period.</p> <p>20 Q. Now the two sentences immediately or</p> <p>21 the three sentences I guess it is actually -- I am</p> <p>22 not going to count the number of sentences. Let's</p> <p>23 read the part in between the part that I read</p> <p>24 earlier and the part that you just read. It says</p> <p>25 "I have been paid eleven thousand dollars so far</p>


66 (Pages 258 - 261)

<p style="text-align: right;">Page 278</p> <p>1 L. Eber</p> <p>2 know this was December 18, 2012 and the</p> <p>3 foreclosure was in February; wasn't it? So they</p> <p>4 didn't hold Connecticut if that's the...</p> <p>5 Q. When you saw this at the time in</p> <p>6 December of 2012, did you do anything to try to</p> <p>7 correct the misstatement?</p> <p>8 MR. RAMSEY: Form.</p> <p>9 A. I think they -- there were -- Wendy</p> <p>10 Eber did do something on that to get it because it</p> <p>11 wasn't right.</p> <p>12 Q. What did Wendy Eber do?</p> <p>13 A. I don't remember. But I know it was a</p> <p>14 mistake and it is very possible he sent this out</p> <p>15 without showing it to us.</p> <p>16 Q. Why was it Wendy Eber's responsibility</p> <p>17 to do anything to correct this letter sent by a</p> <p>18 co-trustee?</p> <p>19 MR. RAMSEY: Form.</p> <p>20 A. She was the financial person who</p> <p>21 watched the finances at that time.</p> <p>22 Q. What finances?</p> <p>23 A. CFO of the companies, the Eber</p> <p>24 companies.</p> <p>25 Q. Did she have any role or</p>	<p style="text-align: right;">Page 280</p> <p>1 L. Eber</p> <p>2 Q. In hindsight, do you believe you</p> <p>3 should have contacted either Audrey Hays or Sally</p> <p>4 Kleeberg or both of them after you saw this</p> <p>5 letter?</p> <p>6 MR. RAMSEY: Form. Go ahead.</p> <p>7 A. Yes. If I had seen it before it came</p> <p>8 out I would have known that it should have been</p> <p>9 corrected.</p> <p>10 Q. I am going to show you a new exhibit.</p> <p>11 This is I believe now 50.</p> <p>12 (Plaintiffs' Exhibit 50, a chain of</p> <p>13 two e-mails possible another e-mail that</p> <p>14 appears to have been redacted Bates number</p> <p>15 EB 00031202, marked for identification, as</p> <p>16 of this date.)</p> <p>17 Q. Plaintiffs' Exhibit 50 is a chain of</p> <p>18 two e-mails possibly another e-mail that appears</p> <p>19 to have been redacted. The document bears Bates</p> <p>20 number EB 00031202. The top e-mail is from Wendy</p> <p>21 Eber to Lester Eber and Mike Gumaer dated January</p> <p>22 10, 2013. The subject is Allen Eber Trust.</p> <p>23 Do you see that?</p> <p>24 A. Mm-hmm.</p> <p>25 Q. Is that a yes?</p>
<p style="text-align: right;">Page 279</p> <p>1 L. Eber</p> <p>2 responsibility in connection with the Allen Eber</p> <p>3 Trust?</p> <p>4 A. No. She was not involved in the Allen</p> <p>5 Eber Trust.</p> <p>6 Q. You were a co-trustee of the trust</p> <p>7 though; is that right?</p> <p>8 A. That's correct.</p> <p>9 Q. So --</p> <p>10 A. As I told you, this letter shouldn't</p> <p>11 have been sent out and it was a mistake and I</p> <p>12 refer you to your deposition with Hawks which you</p> <p>13 had in Rochester and I don't know if you are going</p> <p>14 to see or talk to him again. This was something</p> <p>15 that was handled by Richard Hawks. Now Richard,</p> <p>16 what's his name? Yeah, Richard Hawks.</p> <p>17 Q. Did you contact either Sally Kleeberg</p> <p>18 or Audrey Hays after seeing this letter to advise</p> <p>19 them of the sale or the transfer rather of the</p> <p>20 Eber Connecticut business to Alexbay?</p> <p>21 MR. RAMSEY: Form.</p> <p>22 A. I don't remember doing that.</p> <p>23 Q. Why not?</p> <p>24 A. I don't know.</p> <p>25 MR. CALIHAN: Objection to form.</p>	<p style="text-align: right;">Page 281</p> <p>1 L. Eber</p> <p>2 A. Yes.</p> <p>3 Q. The e-mail states "Lester and Mike,</p> <p>4 attached is the December 2012 statement for the</p> <p>5 trust of Allen Eber from Canandaigua Bank. It</p> <p>6 values Eber stock at approximately 655,000</p> <p>7 dollars. It should be zero per our conversation</p> <p>8 in June with Rick Hawks. Regards Wendy."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Do you know what valuation she is</p> <p>12 referring to?</p> <p>13 A. No.</p> <p>14 Q. Do you know what the 655,000 dollars</p> <p>15 number is?</p> <p>16 A. No.</p> <p>17 Q. Do you know where Canandaigua got that</p> <p>18 number from?</p> <p>19 A. No.</p> <p>20 Q. Do you know what Wendy was referring</p> <p>21 to when she referred to a conversation in June</p> <p>22 with Rick Hawks?</p> <p>23 A. I would believe that she told him that</p> <p>24 it should be zero. That the Eber Brothers stock</p> <p>25 should be valued at zero per our conversation in</p>

<p style="text-align: right;">Page 290</p> <p>1 L. Eber</p> <p>2 marked.</p> <p>3 Do you have that in front of you?</p> <p>4 A. Yes.</p> <p>5 Q. And comparing Exhibit 5 against</p> <p>6 Exhibit 4, it appears that the paragraph that you</p> <p>7 had asked to change was simply deleted in the</p> <p>8 December 2013 letter?</p> <p>9 A. Yes.</p> <p>10 Q. So no correction of the fact was made?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 Q. Is that right?</p> <p>13 A. Looks like that.</p> <p>14 Q. To your knowledge, did any of the</p> <p>15 co-trustees or anyone on their behalf ever inform</p> <p>16 either Audrey Hays or Sally Kleeberg or Sally</p> <p>17 Kleeberg's children about the misstatement that</p> <p>18 had been made in the December 18, 2012 letter?</p> <p>19 MR. RAMSEY: Form.</p> <p>20 A. I don't know.</p> <p>21 Q. Did you ever discuss the transfer of</p> <p>22 Eber Metro to Alexbay with any of Sally Kleeberg,</p> <p>23 Audrey Hays, Dan Kleeberg or Lisa Stein?</p> <p>24 A. I talked to my sister Sally.</p> <p>25 Q. When was that?</p>	<p style="text-align: right;">Page 292</p> <p>1 L. Eber</p> <p>2 say much when you talked to her?</p> <p>3 A. It depends. She was very personable</p> <p>4 and had a lot of friends and she just didn't say</p> <p>5 much.</p> <p>6 Q. Where did this conversation occur?</p> <p>7 A. In a restaurant where we had dinner.</p> <p>8 Q. Where was that?</p> <p>9 A. In Buffalo.</p> <p>10 Q. Do you recall the restaurant?</p> <p>11 A. 800.</p> <p>12 Q. Is this a restaurant that you</p> <p>13 frequently went to?</p> <p>14 A. She would go to.</p> <p>15 Q. Did she live in the Buffalo area?</p> <p>16 A. Yes.</p> <p>17 Q. Was anyone else present for this</p> <p>18 conversation?</p> <p>19 A. My wife was with me but she had</p> <p>20 excused herself to go to the bathroom and it was</p> <p>21 just the two of us.</p> <p>22 Q. By the time your wife came back the</p> <p>23 conversation was over?</p> <p>24 A. Yeah. It wasn't a long conversation.</p> <p>25 Q. And after that conversation, did you</p>
<p style="text-align: right;">Page 291</p> <p>1 L. Eber</p> <p>2 A. Could have been a year before she died</p> <p>3 or so.</p> <p>4 Q. Approximately, when was that?</p> <p>5 A. It was in the summer when she died in</p> <p>6 what, '14 or '15. Probably a year before I told</p> <p>7 her about that.</p> <p>8 Q. What did you tell her specifically?</p> <p>9 A. That the company had lost a lot of</p> <p>10 money and I had lent in a lot of money and that I</p> <p>11 took it over to protect my interest.</p> <p>12 Q. How did she respond?</p> <p>13 A. She didn't -- I don't think she liked</p> <p>14 it very much.</p> <p>15 Q. Why do you say that?</p> <p>16 A. She didn't respond very much.</p> <p>17 Q. Do you recall anything that she said?</p> <p>18 A. No.</p> <p>19 Q. Do you recall --</p> <p>20 A. She --</p> <p>21 Q. Go ahead.</p> <p>22 A. She didn't say much.</p> <p>23 Q. Was she sick at that time?</p> <p>24 A. No.</p> <p>25 Q. Was she typically someone that didn't</p>	<p style="text-align: right;">Page 293</p> <p>1 L. Eber</p> <p>2 make any effort to memorialize the fact what you</p> <p>3 had told her?</p> <p>4 A. I don't remember that.</p> <p>5 Q. Why didn't you?</p> <p>6 MR. RAMSEY: Form.</p> <p>7 MR. CALIHAN: Form.</p> <p>8 A. I have been absorbed by keeping the</p> <p>9 company going and seeing that it's viable and not</p> <p>10 going into liquidation.</p> <p>11 Q. Was there any benefit to either of the</p> <p>12 other trust beneficiaries at the time Audrey Hays</p> <p>13 or Sally Kleeberg from your transferring Eber</p> <p>14 Metro to Alexbay?</p> <p>15 MR. RAMSEY: Form.</p> <p>16 A. Benefit?</p> <p>17 Q. Did it benefit them in any way?</p> <p>18 A. I don't know. I don't have an answer</p> <p>19 for you.</p> <p>20 Q. Did you think about whether it</p> <p>21 benefitted them at the time that you did it?</p> <p>22 MR. RAMSEY: Form.</p> <p>23 A. I thought about -- no. I thought</p> <p>24 about keeping Connecticut viable and not facing</p> <p>25 liquidation. That's what my thinking was about.</p>

<p style="text-align: right;">Page 294</p> <p>1 L. Eber</p> <p>2 Q. So you weren't thinking about whether</p> <p>3 that transaction would have any positive or</p> <p>4 negative impact on the shareholders of the</p> <p>5 company; is that right?</p> <p>6 A. I was thinking about keeping the</p> <p>7 company alive and if I didn't do it there wouldn't</p> <p>8 be a business today.</p> <p>9 Q. So that was a yes that you were not</p> <p>10 thinking about the shareholders?</p> <p>11 MR. CALIHAN: Objection to form.</p> <p>12 MR. RAMSEY: Form.</p> <p>13 A. I didn't say that.</p> <p>14 Q. So walk me through your reasoning.</p> <p>15 In what way did you consider the</p> <p>16 shareholders' interests benefitted or harmed by</p> <p>17 the Alexbay acquisition of Eber Metro?</p> <p>18 A. I had asked the shareholders to</p> <p>19 invest. They chose not to. I proceeded on my</p> <p>20 own. I spent millions of dollars, lent. Paid</p> <p>21 legal fees and I did not -- I was absorbed with</p> <p>22 keeping the company alive.</p> <p>23 Q. Did you -- sorry, go ahead.</p> <p>24 A. That's it.</p> <p>25 Q. Did you describe your request for</p>	<p style="text-align: right;">Page 296</p> <p>1 L. Eber</p> <p>2 proud of what you did?</p> <p>3 A. Yes.</p> <p>4 MR. RAMSEY: Form.</p> <p>5 Q. Why?</p> <p>6 A. I did what I had to do to keep -- you</p> <p>7 know, it is all speculation. So I did what I had</p> <p>8 to do to survive to keep the company alive.</p> <p>9 Q. Your father wanted the company to</p> <p>10 remain with the full family; right?</p> <p>11 A. Well, he took the family -- he took</p> <p>12 the family really out of it and set up trusts</p> <p>13 outside of the family that had control of</p> <p>14 everything.</p> <p>15 Q. So he wanted the business to remain</p> <p>16 with the trust?</p> <p>17 MR. RAMSEY: Form.</p> <p>18 Q. Correct?</p> <p>19 A. He just took family members out of it.</p> <p>20 So I don't know what he did. I have no idea what</p> <p>21 his thinking was. I never saw his will or</p> <p>22 anything. I was handed a copy of his estate when</p> <p>23 I first met Mr. Gumaer. I knew from nothing.</p> <p>24 Q. Just to wrap this up, did you ever</p> <p>25 discuss the transfer of Eber Metro to Alexbay with</p>
<p style="text-align: right;">Page 295</p> <p>1 L. Eber</p> <p>2 money to either Audrey Hays or Sally Kleeberg as</p> <p>3 an investment opportunity?</p> <p>4 A. Originally I did and in original</p> <p>5 letters I asked for them to invest.</p> <p>6 Q. And did you make it sound like a very</p> <p>7 good investment?</p> <p>8 MR. RAMSEY: Form.</p> <p>9 A. You see what it said. The letters</p> <p>10 speak for themselves.</p> <p>11 Q. Was the family business important to</p> <p>12 your sister Sally?</p> <p>13 A. Yes. I believe so.</p> <p>14 Q. So wasn't it important for you to make</p> <p>15 clear to her that you intended to take the company</p> <p>16 for yourself and away from the rest of the family</p> <p>17 if she didn't invest?</p> <p>18 MR. RAMSEY: Form.</p> <p>19 A. I didn't feel -- I asked her to</p> <p>20 invest. I am not going to say to her what I was</p> <p>21 going to do or not do. I did what I had to do to</p> <p>22 keep the company alive to make -- so we can clean</p> <p>23 up our statement and get a bank loan. Otherwise,</p> <p>24 there wouldn't be a company.</p> <p>25 Q. Do you think your father would be</p>	<p style="text-align: right;">Page 297</p> <p>1 L. Eber</p> <p>2 anyone else in your family besides Sally Kleeberg</p> <p>3 and Wendy Eber?</p> <p>4 A. No. There wouldn't be anyone else to</p> <p>5 discuss it with.</p> <p>6 MR. BROOK: I have no further</p> <p>7 questions.</p> <p>8 MR. CALIHAN: I have no questions at</p> <p>9 this time.</p> <p>10 MR. RAMSEY: We are done.</p> <p>11 THE VIDEOGRAPHER: This marks the end</p> <p>12 of media unit number six in the videotaped</p> <p>13 deposition of Lester Eber. We are going off</p> <p>14 the record. The time is 5:08.</p> <p>15 (Time Noted: 5:08 p.m.)</p> <p>16</p> <p>17</p> <p>18 LESTER EBER</p> <p>19</p> <p>20 Subscribed and sworn to before me</p> <p>21 this day of , 2019.</p> <p>22</p> <p>23</p> <p>24 (Notary Public) My Commission Expires:</p> <p>25</p>

75 (Pages 294 - 297)

<p style="text-align: right;">Page 298</p> <p>1 2 C E R T I F I C A T E 3 STATE OF NEW YORK) : ss. 4 COUNTY OF NEW YORK) 5 I, LYNNE D. METZ, a Shorthand Reporter 6 and a Notary Public within and for the State of 7 New York, do hereby certify that the foregoing 8 deposition of LESTER EBER was taken before me on 9 the 24th day of January, 2019; 10 That the said witness was duly sworn 11 before the commencement of his testimony; that the 12 said testimony was taken stenographically by me 13 and then transcribed. 14 I further certify that I am not 15 related by blood or marriage to any of the parties 16 to this action or interested directly or 17 indirectly in the matter in controversy; nor am I 18 in the employ of any of the counsel in this 19 action. 20 IN WITNESS WHEREOF, I have hereunto 21 set my hand this 8th day of February, 2019. 22 23 24  25 LYNNE D. METZ</p>	<p style="text-align: right;">Page 300</p> <p>1 2 Consulting Agreement Bates numbers EB 3 00000702 through 711 4 Exhibit 28, a series of W-2s that were 64 5 produced by the parties in discovery 6 Bates numbers EB 00021420 through 428 7 Exhibit 29, a series of letters that 71 8 appears to be written on Lester Eber's 9 letterhead bearing Bates stamps EB 695 10 through 701 11 Exhibit 30, a document entitled Amended 99 12 and Restated Promissory Note bearing 13 Bates numbers EB 00031310 through 311 14 Exhibit 31, a copy of two printouts 110 15 made on October 1, 2016 from the 16 Connecticut Department of State 17 concerning the business Alexbay LLC 18 Exhibit 32, a letter and some 128 19 attachments that are dated July 12, 20 2017 from Rita Nischal of Canandaigua 21 National Bank and Trust to Lester Eber 22 Exhibit 33, a order in the Surrogates 128 23 Court of The State of New York in 24 Monroe County dated June 1, 2017 signed 25 by Surrogate Judge John M. Owens</p>
<p style="text-align: right;">Page 299</p> <p>1 2 January 24, 2019 3 4 I N D E X 5 WITNESS EXAMINATION BY PAGE 6 LESTER EBER MR. BROOK 7 7 8 ----- INFORMATION REQUESTS ----- 9 DIRECTIONS (DI): 141, 161 10 INSERT: None 11 RULINGS (RL): None 12 REQUESTS (RQ): 75, 181 13 CERTIFIED (CE): None 14 MOTIONS (MO): None 15 16 E X H I B I T S 17 Plaintiffs' Exhibits For ID 18 Exhibit 25, a document entitled 15 19 Unanimous Written Consent of the Board 20 of Directors of Eber Brothers Wine and 21 Liquor Corporation Bates numbered EB 22 00001338 through 1340 23 Exhibit 26, an article found online on 37 24 casshilldevelopment.com 25 Exhibit 27, a document entitled 61</p>	<p style="text-align: right;">Page 301</p> <p>1 2 Exhibit 34, a letter and attachments 132 3 that was produced yesterday by 4 Canandaigua National Bank Bates stamped 5 CNB-PL 0010 through 12 6 Exhibit 35, a e-mail and attachment 137 7 dated October 31, 2018 sent by Paul 8 Keneally with multiple recipients 9 CNB-PL 0001 to 2 10 Exhibit 36, a printout of a table with 141 11 some notes entitled Residuary TUW Allen 12 Eber Proposed Distribution of 13 Securities 14 Exhibit 37, a e-mail dated September 141 15 15, 2017 sent by Jim Vazzana to R. 16 Nischal at CNB, Canandaigua National 17 Bank, with yourself as one of the 18 people copied on it Bates stamped 19 CNB-PL 0005 20 Exhibit 38, a letter dated October 11, 144 21 2017 on letterhead for Woods Oviatt 22 Gilman LLP addressed to Jim Vazzana and 23 me 24 Exhibit 39, a four-page letter dated 148 25 November 5, 2018 by Paul Keneally</p>

<p style="text-align: right;">Page 302</p> <p>1 2 addressed to Magistrate Judge Katherine 3 Parker 4 Exhibit 40, a e-mail dated June 2, 2017 151 5 from Jim Vazzana to Lorisa LaRocca 6 Bates number CNB-PL 0022 7 Exhibit 41, an e-mail dated August 18, 151 8 2017 from Jim Vazzana to Lorisa LaRocca 9 Exhibit 42, a copy of a letter dated 155 10 October 10, 2018 from Audrey Hays to 11 Wendy Eber and Lester Eber 12 Exhibit 43, a series of documents that 167 13 were produced together Bates range EB 14 00001166 through 1173 15 Exhibit 44, a copy of a summons and 191 16 complaint dated February 21, 2012 17 bearing Bates number KSH 00070 through 18 83 19 Exhibit 45, a document bearing the 209 20 caption of Alexbay versus Eber Brothers 21 and it states it is the affidavit of 22 Lester Eber bearing Bates numbers EB 23 00001059 through 1063 24 Exhibit 46, Affidavit of Lester Eber 218 25 bearing Bates numbers EB 00017525</p>	<p style="text-align: right;">Page 304</p> <p>1 ERRATA SHEET 2 VERITEXT LEGAL SOLUTIONS 3 330 OLD COUNTRY ROAD 4 MINEOLA, NEW YORK 11501 5 516-608-2400 6 NAME OF CASE: Kleeberg, et al v. Eber, et al 7 NAME OF DEPONENT: Lester Eber 8 DATE OF DEPOSITION: January 24, 2019 9 PAGE LINE(S) CHANGE REASON 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Lester Eber</p> <p>SUBSCRIBED AND SWORN TO BEFORE ME THIS ___ DAY OF _____, 20__.</p> <p>(NOTARY PUBLIC) MY COMMISSION EXPIRES:</p>
<p style="text-align: right;">Page 303</p> <p>1 2 through 544 3 Exhibit 47, a two-page letter on the 253 4 letterhead for Elliot W. Gumaer, Jr. 5 Dated January 2, 2001 Bates stamped 6 January 8, 2001 and Bates number EB 7 00001556 to 57 8 Exhibit 48, an e-mail from Mike Gumaer 257 9 to Wendy Eber and Lester Eber dated 10 October 29, 2013 bearing Bates number 11 GUM 000023 12 Exhibit 49, a letter on Eber Brothers 264 13 Wine and Liquor Corp. Letterhead signed 14 by Lester Eber Bates number KSH 00004 15 dated April 2, 2010 16 Exhibit 50, a chain of two e-mails 280 17 possible another e-mail that appears to 18 have been redacted Bates number EB 19 00031202 20 Exhibit 51, an e-mail from Mike Gumaer 286 21 to Lester Eber copying Wendy Eber dated 22 December 1, 2013 bearing Bates numbers 23 EB 00031106 24 25 ***Exhibits retained by counsel.***</p>	

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 Civil Action No.: 16-cv-951 (LAK)

-----x

5 DANIEL KLEEGERG, LISA STEIN and AUDREY HAYS,

6
7 Plaintiff,

8 -against-

9
10 LESTER EBER; ALEXBAY, LLC f/k/a LESTER EBER,
11 LLC; CANANDAIGUA NATIONAL CORPORATION d/b/a
12 CANANDAIGUA NATIONAL BANK & TRUST; ELLIOT
13 W. GUMAER, JR.; EBER BROS. & CO., INC., EBER
14 BROTHERS WINE AND LIQUOR CORPORATION;
15 BROS. WINE AND LIQUOR METRO, INC.,
16 EBER-CONNECTICUT, LLC; and WENDY EBER,
17 Defendants.

-----x

16 1250 Broadway
17 New York, New York 10001
18 June 27, 2019
19 1:35 p.m.

20
21 CONTINUED VIDEOTAPED DEPOSITION OF LESTER EBER,
22 held at the above-mentioned time and place before
23 ANNMARIE OAKLEY, a Notary Public of the State of
24 New York.
25

<p style="text-align: right;">Page 306</p> <p>1</p> <p>2</p> <p>3 APPEARANCES</p> <p>4</p> <p>5 BROOK & ASSOCIATES PLLC Attorneys for Plaintiffs</p> <p>6 100 Church Street, 8th Floor New York, New York 10007</p> <p>7</p> <p>8 BY: BRIAN BROOK, ESQ.</p> <p>9</p> <p>10 UNDERBERG & KESSLER LLP Attorneys for Defendants</p> <p>11 LESTER EBER; ALEXBAY, LLC f/k/a LESTER EBER, LLC; EBER BROTHERS & CO., INC; EBER BROS. WINE AND LIQUOR</p> <p>12 CORPORATION; EBER BROS. WINE AND LIQUOR METRO, INC., EBER-CONNECTICUT, LLC; and WENDY EBER</p> <p>13 50 Fountain Plaza Buffalo, New York 14202</p> <p>14</p> <p>15 BY: COLIN RAMSEY, ESQ.</p> <p>16 CALIHAN LAW PLLC Attorneys for Defendant</p> <p>17 THE ESTATE OF ELLIOT W. GUMAER 16 Main Street Rochester, New York 14614</p> <p>18</p> <p>19 BY: ROBERT B. CALIHAN, ESQ.</p> <p>20</p> <p>21 Also present: Phil Glauberson, videographer 22 Wendy Eber, telephonically.</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 308</p> <p>1 L. EBER</p> <p>2 attending remotely will now state their appearances</p> <p>3 and affiliations for the record.</p> <p>4 MR. BROOK: Brian Brook, Brook &</p> <p>5 Associates, PLLC for the plaintiffs.</p> <p>6 MR. RAMSEY: Colin Ramsey, Underberg &</p> <p>7 Kessler for the Eber defendants.</p> <p>8 MR. CALIHAN: Robert Calihan of Calihan</p> <p>9 Law on behalf of the estate of Elliot Gumaer.</p> <p>10 VIDEOGRAPHER: Will the court reporter,</p> <p>11 please, swear in the witness.</p> <p>12 MR. RAMSEY: Wendy Eber is on the phone.</p> <p>13 L E S T E R E B E R, having first been duly sworn</p> <p>14 or affirmed by a Notary Public of the State of</p> <p>15 New York, was examined and testified as follows:</p> <p>16 EXAMINATION BY MR. BROOK:</p> <p>17 Q Would you state your name for the record,</p> <p>18 please.</p> <p>19 A Lester Eber.</p> <p>20 Q Would you state your address for the</p> <p>21 record, please.</p> <p>22 A 95 Allens Creek Road, Rochester, New York</p> <p>23 14618.</p> <p>24 Q Good afternoon, Lester. Good to see you</p> <p>25 again. I already deposed you one previous day. Do</p>
<p style="text-align: right;">Page 307</p> <p>1 L. EBER</p> <p>2 VIDEOGRAPHER: Good afternoon. We are</p> <p>3 going on the record at 1:39 p.m. on June 27,</p> <p>4 2019. Please, note that the microphones are</p> <p>5 sensitive and may pick up whispering, private</p> <p>6 conversations and cellular interference.</p> <p>7 Please, turn off all cellphones and place them</p> <p>8 away from the microphones as they can interfere</p> <p>9 with the deposition audio. Audio and video</p> <p>10 recording will continue to take place unless</p> <p>11 all parties agree to go off the record.</p> <p>12 This is media unit one, day two of the</p> <p>13 video recorded deposition of Lester Eber in the</p> <p>14 matter of Daniel Kleeberg et al. versus Lester Eber</p> <p>15 et al. filed in the United States District Court</p> <p>16 Southern District of New York, Civil Action number</p> <p>17 16-cv-951 LAK. This deposition is being held at</p> <p>18 Veritext, located at 1250 Broadway New York, New</p> <p>19 York. My name is Phil Glauberson from the firm</p> <p>20 Veritext and I am the videographer. The court</p> <p>21 reporter is AnnMarie Oakley from the firm Veritext.</p> <p>22 I am not authorized to administer an oath.</p> <p>23 I am not related to any party in this action nor am</p> <p>24 I financially interested in the outcome. Counsel</p> <p>25 and all present in the room, please, and everyone</p>	<p style="text-align: right;">Page 309</p> <p>1 L. EBER</p> <p>2 you need me to go over any of the instructions or</p> <p>3 rules for how this works?</p> <p>4 A Your choice. I --</p> <p>5 MR. RAMSEY: Did you need him to?</p> <p>6 THE WITNESS: I -- you know I --</p> <p>7 MR. RAMSEY: I think we can skip those.</p> <p>8 Q Do you have any questions about how this</p> <p>9 works today?</p> <p>10 A Not yet.</p> <p>11 Q Just to refresh at least one thing, if you</p> <p>12 don't understand something in my question it's</p> <p>13 important that you let me know because if you answer</p> <p>14 my question I'm going to assume that you understood</p> <p>15 it. Okay?</p> <p>16 A Okay.</p> <p>17 Q And as I think you just recalled, it's</p> <p>18 also important to give verbal answer not just nods</p> <p>19 or uh-uh.</p> <p>20 A Yes.</p> <p>21 Q How are you feeling today?</p> <p>22 A So far okay.</p> <p>23 Q Is there any reason why you would not be</p> <p>24 able to testify fully and truthfully today, such as</p> <p>25 being under the influence of medication or undue</p>

<p style="text-align: right;">Page 330</p> <p>1 L. EBER</p> <p>2 A Oh, in the back. Yes. It comes from him,</p> <p>3 yes. He's the one who handled it.</p> <p>4 Q So if you think you talked to him why</p> <p>5 didn't he send this to you?</p> <p>6 MR. RAMSEY: Form.</p> <p>7 A I'm not the administrative person. I'm</p> <p>8 not the secretary there.</p> <p>9 Q Where are you referring to?</p> <p>10 A There weren't any employees there. It was</p> <p>11 just -- Wendy was the only one that could -- that</p> <p>12 was there. We had no secretaries, no people to do</p> <p>13 anything.</p> <p>14 Q I'm asking what company you're referring</p> <p>15 to.</p> <p>16 A Well, with anything that would have</p> <p>17 involved getting a security for the loans.</p> <p>18 Q So you can't say which entity you're</p> <p>19 referring to that Wendy was doing the secretarial</p> <p>20 work for?</p> <p>21 MR. RAMSEY: Form.</p> <p>22 A I could not -- I would not remember that</p> <p>23 because there were so many there and I wouldn't want</p> <p>24 to pin it down to one and say it wasn't another one.</p> <p>25 I can't. To the best of my recollection I can't</p>	<p style="text-align: right;">Page 332</p> <p>1 L. EBER</p> <p>2 the last sentence of the first paragraph there is</p> <p>3 referring to a conversation between the author,</p> <p>4 Michael Beamer, and Glenn Sturm and it says, quote,</p> <p>5 "Glenn told me that he wanted to protect the loans</p> <p>6 and guarantee that the Article 9 transfer was</p> <p>7 somehow upset in the future." end quote. Do you see</p> <p>8 that?</p> <p>9 A Yeah, Glenn told me. Yes.</p> <p>10 Q Do you recall why Glenn Sturm was</p> <p>11 concerned about the Article 9 transfer being upset</p> <p>12 in the future?</p> <p>13 MR. RAMSEY: Form.</p> <p>14 A I think Glenn was a very intelligent man.</p> <p>15 We relied on him for his legal advice and he just</p> <p>16 wanted to protect us to the best of his ability or</p> <p>17 protect me.</p> <p>18 Q Did you discuss with him the possibility</p> <p>19 that the Article 9 transfer might be upset in the</p> <p>20 future?</p> <p>21 A No.</p> <p>22 Q Did you discuss that with Wendy.</p> <p>23 A I don't remember any kind of discussion.</p> <p>24 The whole discussion was to protect the loans that I</p> <p>25 had given the company.</p>
<p style="text-align: right;">Page 331</p> <p>1 L. EBER</p> <p>2 give you a definite one that she was working for.</p> <p>3 Q Now, this memo is also sent to Glenn</p> <p>4 Sturm. We discussed him before but was Glenn Sturm</p> <p>5 ever your personal attorney?</p> <p>6 A Not my personal attorney, no. Yeah, well</p> <p>7 he did some work for me personally but he did</p> <p>8 corporate work for us to.</p> <p>9 Q What work did he do for you personally?</p> <p>10 A Well, I think after I would ask him</p> <p>11 questions. He was a lawyer and he would give me</p> <p>12 legal advice.</p> <p>13 Q Did you ever pay him for that advice?</p> <p>14 A I personally don't remember paying him.</p> <p>15 Q Who paid Glenn Sturm for his services?</p> <p>16 A I don't remember who.</p> <p>17 Q Beside yourself individually -- well,</p> <p>18 let's step back. Can you give any specific examples</p> <p>19 of a transaction or document where Glenn Sturm gave</p> <p>20 you advice as your personal lawyer?</p> <p>21 A I don't remember.</p> <p>22 Q Did you ever sign an engagement agreement</p> <p>23 with Glenn Sturm?</p> <p>24 A I don't remember doing that.</p> <p>25 Q Did you ever -- just looking at this memo,</p>	<p style="text-align: right;">Page 333</p> <p>1 L. EBER</p> <p>2 Q And as you sit here today do you recall</p> <p>3 any loans that you had given in to any Eber Brothers</p> <p>4 company that had not be assigned to Alex Bay by you</p> <p>5 earlier in the year in 2012?</p> <p>6 A I don't remember.</p> <p>7 Q When is the last time that you spoke to</p> <p>8 Glenn Sturm?</p> <p>9 A Could be a year or two or a year ago or</p> <p>10 more.</p> <p>11 Q Did you discuss this case with him?</p> <p>12 A The man has been very sick. I have not</p> <p>13 talked to him.</p> <p>14 Q He's had cancer; correct? Is that yes?</p> <p>15 A Yes.</p> <p>16 Q But he's had cancer since you've known</p> <p>17 him; correct?</p> <p>18 A Yes.</p> <p>19 Q Is it your understanding that the cancer</p> <p>20 has gotten worse recently?</p> <p>21 A Yes.</p> <p>22 Q Do you know, did he move out of his home?</p> <p>23 A I don't know.</p> <p>24 Q Was Glenn Sturm the first person to</p> <p>25 suggest to you that you should secure the loans that</p>

8 (Pages 330 - 333)

<p style="text-align: right;">Page 334</p> <p>1 L. EBER</p> <p>2 you made to the company?</p> <p>3 MR. RAMSEY: Form.</p> <p>4 A I don't remember but he did say that to</p> <p>5 me.</p> <p>6 Q Having had the chance to review the</p> <p>7 document that you did does that refresh your</p> <p>8 recollection that it was Glenn Sturm's law firm,</p> <p>9 Nelson Mullins, that drafted the original security</p> <p>10 agreement that you signed in 2010?</p> <p>11 A It could have been. You have it there and</p> <p>12 I read it. I believe that they did it.</p> <p>13 Q And you previously testified that you</p> <p>14 thought Pat Dalton had drafted the security</p> <p>15 agreement so you would now conceive that was an</p> <p>16 incorrect recollection?</p> <p>17 MR. RAMSEY: Form.</p> <p>18 A I don't remember saying that about Pat</p> <p>19 Dalton. You might have some records that show that</p> <p>20 but it could have been. Dalton could have been the</p> <p>21 first one too, I mean before Glenn --</p> <p>22 MR. RAMSEY: Just what you recollect.</p> <p>23 Don't assume.</p> <p>24 MR. BROOK: This one marked as Plaintiff's</p> <p>25 Exhibit 99 bears Bates numbers EB714 through</p>	<p style="text-align: right;">Page 336</p> <p>1 L. EBER</p> <p>2 Q Why did you want Mike Gumaer to look over</p> <p>3 these documents and give you comments?</p> <p>4 A After talking to Mike as my counsel that I</p> <p>5 thought was the prudent thing to do.</p> <p>6 Q So as of March 2010 was it your belief</p> <p>7 that Mike Gumaer was still representing you as your</p> <p>8 personal attorney?</p> <p>9 A Yes.</p> <p>10 Q At what point did Mike Gumaer stop being</p> <p>11 your personal attorney?</p> <p>12 A He didn't.</p> <p>13 MR. CALIHAN: He's not representing him</p> <p>14 today.</p> <p>15 Q When you met is that -- it is your belief</p> <p>16 that he continued to be your personal attorney until</p> <p>17 the day he died; is that right?</p> <p>18 A Yes.</p> <p>19 Q When did he first become your personal</p> <p>20 attorney?</p> <p>21 A 1970, July of 1970.</p> <p>22 Q At that time did you have any sort of a</p> <p>23 documentation of that representation?</p> <p>24 A No.</p> <p>25 Q Do you recall any documentation of Mike</p>
<p style="text-align: right;">Page 335</p> <p>1 L. EBER</p> <p>2 728. It's an email and one of the attachments.</p> <p>3 The other attachments do not appear to have</p> <p>4 been produced.</p> <p>5 (EB714 to EB728 was marked as</p> <p>6 Plaintiff's Exhibit 99 for</p> <p>7 identification.)</p> <p>8 Q Do you recognize this document?</p> <p>9 A This was sent to me care of my secretary.</p> <p>10 Q So copied to you?</p> <p>11 A Copied to me, yeah.</p> <p>12 Q And it was being sent to Mike Gumaer?</p> <p>13 A Yeah. Yes.</p> <p>14 Q And the attachment that's there that is a</p> <p>15 draft of the 2010 security agreement that was not</p> <p>16 yet signed; correct?</p> <p>17 A That is correct.</p> <p>18 Q Why were you -- in the email sent by your</p> <p>19 assistant says, "I have attached some documents that</p> <p>20 Mr. Eber would like you to look over and is asking</p> <p>21 for your comments. He's is mailing each of the</p> <p>22 three documents plus a letter all attached to each,</p> <p>23 Sally Kleeberg and Audrey Hays. Also attached is a</p> <p>24 personal letter to Sally." Do you see that?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 337</p> <p>1 L. EBER</p> <p>2 Gumaer's agreement to be your personal attorney?</p> <p>3 A No.</p> <p>4 Q You don't recall the January 2001 letter</p> <p>5 that you signed that we looked at last time?</p> <p>6 A If that's what it was, but you asked me</p> <p>7 when he started as my personal attorney, it's when</p> <p>8 my father passed away in July of 1970.</p> <p>9 Q Did you ever pay Mike Gumaer for his</p> <p>10 services as your personal attorney yourself?</p> <p>11 A Not personally, no.</p> <p>12 Q How was he's compensated for those</p> <p>13 services?</p> <p>14 A The company usually paid him.</p> <p>15 Q In what capacity was he being paid?</p> <p>16 MR. RAMSEY: Form.</p> <p>17 A As counsel to the company, advising them</p> <p>18 on legal questions.</p> <p>19 Q Was he also paid after the year 2000 when</p> <p>20 he resigned from Nixon Peabody through director</p> <p>21 fees?</p> <p>22 A Yes.</p> <p>23 Q So that director fee encompassed his legal</p> <p>24 advice for you; is that correct?</p> <p>25 MR. CALIHAN: Objection to form.</p>

<p style="text-align: right;">Page 358</p> <p>1 L. EBER</p> <p>2 Q And do you see -- so this email is being</p> <p>3 sent to Mike for his signature or March 12, 2012,</p> <p>4 and the consent form states that it's executed as of</p> <p>5 the blank day of February 2012. Do you see that,</p> <p>6 comparing the last and the first page?</p> <p>7 A Yes.</p> <p>8 Q Do you know why the consent form was being</p> <p>9 dated in February when it wasn't being sign or sent</p> <p>10 to Mike Gumaer for signature until sometime in</p> <p>11 March?</p> <p>12 A No.</p> <p>13 Q Can you think of any reason why it would</p> <p>14 be dated in February?</p> <p>15 MR. RAMSEY: Form.</p> <p>16 A No.</p> <p>17 Q Looking at the bottom of the first page,</p> <p>18 it's an email from Wendy to someone named Melinda</p> <p>19 Parker copying you stating, "Melinda, Can you,</p> <p>20 please, substitute my name for Elliot Gumaer as</p> <p>21 president since I will be replacing Lester as</p> <p>22 president." Do you see?</p> <p>23 A Yes.</p> <p>24 Q Does that fresh your recollection as when</p> <p>25 the decision was made for Wendy to be your</p>	<p style="text-align: right;">Page 360</p> <p>1 L. EBER</p> <p>2 needed to be three directors of the company, Eber</p> <p>3 Brothers Wine & Liquor Corp.?</p> <p>4 A I never had that discussion.</p> <p>5 Q Did you discuss with anyone besides Wendy</p> <p>6 and Mike Gumaer about having that third person serve</p> <p>7 as director Eber Brothers Wine & Liquor?</p> <p>8 A I don't remember.</p> <p>9 Q Do you remember this document at all?</p> <p>10 MR. RAMSEY: The last page?</p> <p>11 MR. BROOK: The last page.</p> <p>12 A You know its been since, over nine years.</p> <p>13 I don't remember it but it's here, so it's here.</p> <p>14 Q Do you see the first resolution there says</p> <p>15 that the resignation is accepted and approved</p> <p>16 effective February 1, 2012. Do you see that?</p> <p>17 A Yes.</p> <p>18 Q How was that date selected?</p> <p>19 A I don't remember.</p> <p>20 Q This is Exhibit 104, Bates EB31202. It's</p> <p>21 a chain of emails between you, Wendy and Mike</p> <p>22 Gumaer. Do you see that?</p> <p>23 (EB31202 was marked as</p> <p>24 Plaintiff's Exhibit 104 for</p> <p>25 identification.)</p>
<p style="text-align: right;">Page 359</p> <p>1 L. EBER</p> <p>2 replacement?</p> <p>3 A No.</p> <p>4 Q Did you have a say in who replaced you as</p> <p>5 president of Eber Brothers Wine and Liquor Corp.?</p> <p>6 MR. RAMSEY: Form.</p> <p>7 A I don't remember.</p> <p>8 Q Did you resign as just president or also</p> <p>9 as director of Eber Brothers Wine and Liquor Corp.?</p> <p>10 A I think it could have been just president.</p> <p>11 I don't remember if it was both.</p> <p>12 Q So if you look at the last page of this</p> <p>13 document it says that you're resigning as director</p> <p>14 and president. Do you see that?</p> <p>15 A Yes.</p> <p>16 Q And is it your recollection that that was</p> <p>17 changed prior to being signed so that you only</p> <p>18 resigned as president?</p> <p>19 MR. RAMSEY: Form.</p> <p>20 A I resigned as both of them. That's what</p> <p>21 it says. That's what I did.</p> <p>22 Q When did you become a director of Eber</p> <p>23 Brothers Wine and Liquor Corp. again?</p> <p>24 A I don't remember the exact date.</p> <p>25 Q Did you have an understanding that there</p>	<p style="text-align: right;">Page 361</p> <p>1 L. EBER</p> <p>2 A Yes.</p> <p>3 Q And these are on January 10, 2013, subject</p> <p>4 Alan Eber trust.</p> <p>5 A Yes.</p> <p>6 Q I want to look at the second email first</p> <p>7 the one from Wendy where she is referring to the</p> <p>8 December 2012 statement for the Alan Eber trust</p> <p>9 deposition by Canandaigua Bank and it says, quote,</p> <p>10 "It values Eber Brothers stock at approximately</p> <p>11 \$655,000. It should be zero per our conversation in</p> <p>12 January with Rick Hawks." Do you see that?</p> <p>13 A Yes.</p> <p>14 Q And in your email and response you said,</p> <p>15 "Mike, I think you and I should get Rick on the</p> <p>16 phone to discuss this with him. This was supposed</p> <p>17 to have been done." Do you see?</p> <p>18 A Yes.</p> <p>19 Q What did you mean by that?</p> <p>20 A That it should have been valued at zero.</p> <p>21 That was a mistake for 655,000.</p> <p>22 Q Why was it that you believe the stock</p> <p>23 should be valued at zero?</p> <p>24 A Because it had no assets. There wasn't</p> <p>25 any business.</p>

15 (Pages 358 - 361)

<p style="text-align: right;">Page 362</p> <p>1 L. EBER</p> <p>2 Q And why was that?</p> <p>3 A The company was -- had been consolidated</p> <p>4 and out of business.</p> <p>5 Q Are you referring to the --</p> <p>6 A Eber Brothers.</p> <p>7 Q Eber Metro had been transferred to Alex</p> <p>8 Bay?</p> <p>9 MR. RAMSEY: Form.</p> <p>10 A I'm not referring to that. I'm referring,</p> <p>11 there were no assets in the company so there was</p> <p>12 nothing in Eber Brothers.</p> <p>13 Q What was the last asset that Eber Brothers</p> <p>14 had that you can recall?</p> <p>15 A It probably was Eber Connecticut.</p> <p>16 Q Through Eber Metro; correct?</p> <p>17 A Yes.</p> <p>18 Q Is this the first -- January 2013, is that</p> <p>19 the first time you recall having a discussion with</p> <p>20 anyone about the valuation of Eber Brothers stock on</p> <p>21 the trust statements being inaccurate?</p> <p>22 A I don't remember.</p> <p>23 Q So prior to the transfer of Eber</p> <p>24 Connecticut out of Eber Brothers, was it your belief</p> <p>25 that the value of Eber Brothers stock was</p>	<p style="text-align: right;">Page 364</p> <p>1 L. EBER</p> <p>2 Brothers Wine & Liquor Corp. to Canandaigua National</p> <p>3 Bank?</p> <p>4 A Yes, we had.</p> <p>5 Q When did you do that?</p> <p>6 A I don't remember.</p> <p>7 Q Had you told Canandaigua National Bank</p> <p>8 that you thought that the Eber Brothers stock</p> <p>9 valuation was questionable in light of the debts?</p> <p>10 MR. RAMSEY: Form.</p> <p>11 A I would have but I wasn't talking to them</p> <p>12 but I would have said that.</p> <p>13 Q Why did you say you would have said that?</p> <p>14 A Because it's the facts.</p> <p>15 Q But you don't remember doing it; correct?</p> <p>16 MR. RAMSEY: Form.</p> <p>17 A You can say whatever you wants I --</p> <p>18 Q Well, I'm asking you, you don't remember</p> <p>19 doing that, do you?</p> <p>20 A I don't remember not doing it. I don't</p> <p>21 remember.</p> <p>22 Q Okay. So just to we're clear, you don't</p> <p>23 remember ever telling Canandaigua National Bank</p> <p>24 about the debts of Eber Brothers Wine & Liquor Corp.</p> <p>25 possibly affecting the value of the Eber Brothers &</p>
<p style="text-align: right;">Page 363</p> <p>1 L. EBER</p> <p>2 approximately \$655,000?</p> <p>3 A I don't remember.</p> <p>4 Q Did you think that the Eber Brothers stock</p> <p>5 had any value before Eber Connecticut was transfer</p> <p>6 to Alex Bay?</p> <p>7 MR. RAMSEY: Form.</p> <p>8 A I think with all the debts I think it was</p> <p>9 questionable whether there was any value to it</p> <p>10 because of the monies that were owed.</p> <p>11 Q Which debts are you referring to?</p> <p>12 A Well, the debts of Eber Brothers, the</p> <p>13 Teamsters Pension Plan, the public PBGC and</p> <p>14 Vendersen, it's a real estate company.</p> <p>15 Q And also there was debt to Harris Beach;</p> <p>16 correct?</p> <p>17 A Yes.</p> <p>18 Q Any other debts?</p> <p>19 A There were others, I can't remember them</p> <p>20 all. There were a lot of them.</p> <p>21 Q And you're referring to debts that were</p> <p>22 owed by Eber Brothers Wine & Liquor Corp. or is it</p> <p>23 another entity?</p> <p>24 A I think Eber Brothers Wine & Liquor.</p> <p>25 Q Had you disclosed the debts of Eber</p>	<p style="text-align: right;">Page 365</p> <p>1 L. EBER</p> <p>2 Co. stock --</p> <p>3 MR. RAMSEY: Form.</p> <p>4 A You're putting word into my mouth. You're</p> <p>5 making up words that I did not say. I said I don't</p> <p>6 remember.</p> <p>7 MR. RAMSEY: I think we established what</p> <p>8 didn't happen so move on.</p> <p>9 Q Do you recall ever having -- when is the</p> <p>10 first time you recall trying to having a formal</p> <p>11 valuation done of Eber Brothers Wine & Liquor Corp.</p> <p>12 or Eber Brothers & Co. Inc.?</p> <p>13 A I don't remember.</p> <p>14 Q How did Canandaigua National Bank, how did</p> <p>15 the trust statements that it was issuing come to</p> <p>16 have the number \$655,000 for the Eber Brothers & Co.</p> <p>17 stock?</p> <p>18 A I don't know.</p> <p>19 Q Would you have you been the source of that</p> <p>20 information?</p> <p>21 MR. RAMSEY: Form.</p> <p>22 A No.</p> <p>23 Q Why did you say that?</p> <p>24 A Because I don't know where it came from.</p> <p>25 Q I'm asking you, could it have been from</p>

<p style="text-align: right;">Page 394</p> <p>1 L. EBER</p> <p>2 MR. RAMSEY: The question is: Do you have</p> <p>3 any reason to believe that Wendy saw a copy of</p> <p>4 your will.</p> <p>5 A No.</p> <p>6 Q Is David Eber involved in the wine and</p> <p>7 liquor business?</p> <p>8 A Yes.</p> <p>9 Q How so?</p> <p>10 A He's an importer.</p> <p>11 Q Who does he work for?</p> <p>12 A Himself.</p> <p>13 Q Has he worked for Southern Wine & Spirits</p> <p>14 at any point in time?</p> <p>15 A Yes.</p> <p>16 Q When was that?</p> <p>17 A After we went out of business.</p> <p>18 Q How long did he work for Southern Wine &</p> <p>19 Spirits?</p> <p>20 A I don't remember.</p> <p>21 Q Did you help him get that job?</p> <p>22 A I believe so. I don't remember. I think</p> <p>23 he got it himself. He applied there and they hired</p> <p>24 him.</p> <p>25 Q Did he ever work from Eber Brothers?</p>	<p style="text-align: right;">Page 396</p> <p>1 L. EBER</p> <p>2 A No.</p> <p>3 Q Were the bylaws ever amended after you</p> <p>4 became involved in the business?</p> <p>5 A I don't know.</p> <p>6 Q Do you have a copy of the bylaws?</p> <p>7 A No.</p> <p>8 Q Where was a copy of the bylaws maintained?</p> <p>9 A Corporate offices.</p> <p>10 Q Did you ever give a copy of the bylaws to</p> <p>11 Canandaigua National Bank?</p> <p>12 A I did not.</p> <p>13 Q Did you ever discuss the bylaws with</p> <p>14 anyone from Canandaigua National Bank?</p> <p>15 A No.</p> <p>16 Q To your knowledge did anyone else from</p> <p>17 Eber Brothers do so?</p> <p>18 A I do not know.</p> <p>19 Q I want to draw your attention to page 11</p> <p>20 of this Exhibit 108, Article 12, transfer</p> <p>21 restriction. Do you see that?</p> <p>22 A Yes.</p> <p>23 Q Are you familiar with this provision or of</p> <p>24 the bylaws?</p> <p>25 A I don't remember it.</p>
<p style="text-align: right;">Page 395</p> <p>1 L. EBER</p> <p>2 A Yes.</p> <p>3 Q What was his position?</p> <p>4 A He had a variety of positions. He had</p> <p>5 management positions in different areas.</p> <p>6 Q Are you familiar with the bylaws of Eber</p> <p>7 Brothers Wine & Liquor Corp.?</p> <p>8 A I have read them.</p> <p>9 MR. BROOK: This is marked Exhibit 108, it</p> <p>10 was a document that was produced as the bylaws</p> <p>11 of Eber Brothers Wine & Liquor Corporation.</p> <p>12 The Bates number is EB22533 through 544.</p> <p>13 (EB22533 to EB22544 was marked</p> <p>14 as Plaintiff's Exhibit 108 for</p> <p>15 identification.)</p> <p>16 Q Do you recognize this?</p> <p>17 A I haven't seen it in years.</p> <p>18 Q When is the last time that you recall</p> <p>19 seeing the bylaws of Eber Brothers Wine & Liquor</p> <p>20 Corp.?</p> <p>21 A I don't remember.</p> <p>22 Q Who drafted the bylaws?</p> <p>23 A I do not know.</p> <p>24 Q Were you involved in the drafting of the</p> <p>25 bylaws?</p>	<p style="text-align: right;">Page 397</p> <p>1 L. EBER</p> <p>2 Q Do you recall ever discussing this</p> <p>3 provision of the bylaws with anyone else?</p> <p>4 A I don't remember.</p> <p>5 Q What is your understanding of the purpose</p> <p>6 of Article 12 of the bylaws?</p> <p>7 MR. RAMSEY: Form.</p> <p>8 A I believe it's to transfer -- how the</p> <p>9 stock would be transferred. That's what it says.</p> <p>10 Q Why was this put into the bylaws?</p> <p>11 A I don't know.</p> <p>12 Q To your knowledge has this provision of</p> <p>13 the bylaws ever been enforced?</p> <p>14 A I don't remember.</p> <p>15 Q We're looking at the bylaws of Eber</p> <p>16 Brothers Wine & Liquor Corp. have you seen the</p> <p>17 bylaws of Eber Brothers & Co. Inc.?</p> <p>18 A Possibly I have seen them over the years.</p> <p>19 Q Do you recall ever discussing those with</p> <p>20 anyone from CNB?</p> <p>21 A No.</p> <p>22 Q Do you recall giving a copy of this Eber</p> <p>23 Brothers & Co. Inc. bylaws to CNB?</p> <p>24 A No.</p> <p>25 Q Do you know whether the Eber Brothers &</p>

24 (Pages 394 - 397)

<p style="text-align: right;">Page 434</p> <p>1 L. EBER</p> <p>2 MR. RAMSEY: I'm reading this. I'm going</p> <p>3 to stipulate to withdraw. That doesn't make</p> <p>4 sense. I will stipulate to withdraw that one.</p> <p>5 MR. BROOK: He did sign this thing.</p> <p>6 MR. RAMSEY: I understand. Whatever the</p> <p>7 change was, let's not go back in time but right</p> <p>8 now if it's going to short circuit we can agree</p> <p>9 that it didn't clarify it very well.</p> <p>10 Q Did you review this document, Exhibit 110</p> <p>11 and check it against the transcript for accuracy</p> <p>12 before you signed it?</p> <p>13 A Yes, I did go with it with them but I</p> <p>14 don't remember. I just can't remember all those</p> <p>15 details.</p> <p>16 MR. RAMSEY: All right you answered the</p> <p>17 question.</p> <p>18 Q Was this another instance where you were</p> <p>19 given a document to sign by a lawyer and you signed</p> <p>20 it without reading it carefully?</p> <p>21 MR. RAMSEY: Form.</p> <p>22 A No.</p> <p>23 Q Do you recall any other instance when you</p> <p>24 signed a document given to you by a lawyer without</p> <p>25 reading it carefully besides the Affidavit that was</p>	<p style="text-align: right;">Page 436</p> <p>1 L. EBER</p> <p>2 Brothers Wine & Liquor Corp. So we're talking</p> <p>3 roughly December, January, December 2011,</p> <p>4 January 2012. Are you with me? That's what we were</p> <p>5 talking about?</p> <p>6 A Yes.</p> <p>7 Q My question was: "Why did you not -- and</p> <p>8 this is a typo. "Why did you not extend the</p> <p>9 maturity date of your line of credit note rather</p> <p>10 than begin foreclosure proceedings?" and your new</p> <p>11 answer to that is, "I consulted with my lawyers and</p> <p>12 then decided to do so." So as before I would like</p> <p>13 an answer to my actual question which is: Why</p> <p>14 didn't you extend the maturity date on the line of</p> <p>15 credit here?</p> <p>16 A I did consult with my lawyers but I don't</p> <p>17 remember why I didn't do it.</p> <p>18 Q Isn't it true the reason you didn't</p> <p>19 extended the maturity date on the line of credit</p> <p>20 note was because you wanted to take control of the</p> <p>21 company away from them?</p> <p>22 MR. RAMSEY: Form.</p> <p>23 A I don't remember why I didn't extend it.</p> <p>24 Q Did you want to take personal control of</p> <p>25 Eber Brothers operating assets away from the trust?</p>
<p style="text-align: right;">Page 435</p> <p>1 L. EBER</p> <p>2 prepare for you by Jerry?</p> <p>3 MR. RAMSEY: Form.</p> <p>4 A That one was an exception but I don't</p> <p>5 remember any others.</p> <p>6 Q So, for example, with respect to the</p> <p>7 answer, even though you didn't sign that document</p> <p>8 you knew if was important to make sure that that</p> <p>9 answer was correct and accurate?</p> <p>10 A Yes.</p> <p>11 Q And you made sure it was so; correct?</p> <p>12 MR. RAMSEY: Form. He's not submitting</p> <p>13 the answer.</p> <p>14 Q All right. I want to turn now to the next</p> <p>15 change that you made, page 241 of the last</p> <p>16 transcript. I asked you -- I will wait for you to</p> <p>17 get there.</p> <p>18 A 241?</p> <p>19 Q 241.</p> <p>20 A This goes up to 300.</p> <p>21 Q Bottom right, are you there?</p> <p>22 A Yes.</p> <p>23 Q So at that point I'm discussing your</p> <p>24 decision to foreclose on the debt that was owed to</p> <p>25 you by Eber Metro after it assumed the debt of Eber</p>	<p style="text-align: right;">Page 437</p> <p>1 L. EBER</p> <p>2 MR. RAMSEY: Form.</p> <p>3 A I wanted to stop the company going into</p> <p>4 liquidation, and that's what would have happened if</p> <p>5 I had not given the money and support to the</p> <p>6 company, and there wouldn't be a case even.</p> <p>7 Q So is it your testimony that if you had</p> <p>8 extended the maturity date on your line of credit</p> <p>9 note that would have caused the company to go into</p> <p>10 liquidation?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 A I don't know. I made the decision at the</p> <p>13 time. I don't remember why but my whole mission was</p> <p>14 to keep the company out of liquidation, to keep it</p> <p>15 alive.</p> <p>16 Q Did you want to prevent Eber Connecticut</p> <p>17 from being run for the benefit of Eber Brothers</p> <p>18 pension plan?</p> <p>19 MR. RAMSEY: Form.</p> <p>20 A I supported -- I gave up my pension of 1.5</p> <p>21 million to the PBGC to erase that benefit, to erase</p> <p>22 that debt and I was not personally liable to do it.</p> <p>23 Q They did sue Eber Connecticut before you</p> <p>24 did that; correct?</p> <p>25 A That is correct.</p>

<p style="text-align: right;">Page 438</p> <p>1 L. EBER</p> <p>2 Q So you said that you consulted with</p> <p>3 lawyers and then you acted, which lawyers did you</p> <p>4 consult with about whether to extend the line of</p> <p>5 credit note?</p> <p>6 A I don't remember.</p> <p>7 Q So how did you know that you consulted</p> <p>8 with lawyers?</p> <p>9 MR. RAMSEY: Form.</p> <p>10 A Because I would not sign a document unless</p> <p>11 I talked to legal counsel.</p> <p>12 Q So that's your standard practice; correct?</p> <p>13 A Usually, there could be exceptions, but</p> <p>14 usually.</p> <p>15 Q So do you know whether that was legal</p> <p>16 counsel for you personally or was that corporate</p> <p>17 counsel?</p> <p>18 A I don't remember.</p> <p>19 Q Did you ever discuss whether to extend the</p> <p>20 line of credit note with Mike Gumaer?</p> <p>21 A I don't remember.</p> <p>22 Q You're aware that Glenn Sturm ended up</p> <p>23 providing promissory note to Eber Metro; correct?</p> <p>24 A Yes.</p> <p>25 Q The maturity date on that was extended</p>	<p style="text-align: right;">Page 440</p> <p>1 L. EBER</p> <p>2 MR. RAMSEY: Form.</p> <p>3 A CNB was very well protected by my personal</p> <p>4 guarantee and the 500,000 and 120,000 in stock that</p> <p>5 I left with them. I wasn't protected on anything.</p> <p>6 Q Well, you were in control of the company</p> <p>7 weren't you?</p> <p>8 A The money I lent them, there was no</p> <p>9 security. I had no protection on it. As a creditor</p> <p>10 I would not have had any protection.</p> <p>11 Q Well, for several years you said that you</p> <p>12 gave money to Eber Brothers without having any</p> <p>13 security on it; right?</p> <p>14 A Yes.</p> <p>15 Q Why did you suddenly change your mind?</p> <p>16 MR. RAMSEY: Form.</p> <p>17 A On advice of counsel that's what I did.</p> <p>18 Q And which counsel was that?</p> <p>19 A I don't remember.</p> <p>20 Q It was Glenn Sturm; correct?</p> <p>21 A It could have been.</p> <p>22 Q And Glenn Sturm then prepared a security</p> <p>23 agreement for you to sign in March 2010; correct?</p> <p>24 A If there's one that I signed he did.</p> <p>25 Q What did Eber Brothers get out of giving</p>
<p style="text-align: right;">Page 439</p> <p>1 L. EBER</p> <p>2 twice; correct?</p> <p>3 A I don't remember that.</p> <p>4 Q And Eber Metro never tried to collect on</p> <p>5 that, did it?</p> <p>6 A I really don't know about it. I shouldn't</p> <p>7 say. I do not remember it.</p> <p>8 Q Is it fair to say that with respect to</p> <p>9 CNB, one of the things that you and Wendy tried to</p> <p>10 do, for several years, was to get them to continue</p> <p>11 to extend their credit that they had given to you?</p> <p>12 A Yes.</p> <p>13 Q Why was an extension of credit a good</p> <p>14 thing for the company?</p> <p>15 A Businesses need credit to buy product and</p> <p>16 run, to make a payroll.</p> <p>17 Q So you didn't want them to foreclose on</p> <p>18 the credit?</p> <p>19 A That is correct.</p> <p>20 Q Foreclose is a bad thing; right?</p> <p>21 MR. RAMSEY: Form.</p> <p>22 A It would have liquidated the company.</p> <p>23 Q So foreclosure on credit is a bad thing</p> <p>24 when CNB does it. Why was foreclosure on a line of</p> <p>25 credit when you did it a bad thing?</p>	<p style="text-align: right;">Page 441</p> <p>1 L. EBER</p> <p>2 you security at that time?</p> <p>3 MR. RAMSEY: Form.</p> <p>4 Q Was there any benefit to Eber Brothers for</p> <p>5 signing that security agreement with you then?</p> <p>6 A Benefit to Eber Brothers? Eber Brothers</p> <p>7 kept -- I kept my loans and monies and more than I</p> <p>8 had given them, kept the company alive.</p> <p>9 Q But you already agreed to loan them money;</p> <p>10 correct?</p> <p>11 A I agreed to loan them money, yes.</p> <p>12 Q So if you already agreed to loan them</p> <p>13 money what new did the company get by agreeing to</p> <p>14 secure your loan?</p> <p>15 A I wouldn't of foreclosed. I didn't</p> <p>16 foreclose on them at that time.</p> <p>17 Q So you believe that you could have</p> <p>18 foreclosed on the loan in or around February or</p> <p>19 March of 2010?</p> <p>20 MR. RAMSEY: Form.</p> <p>21 A I don't have the dates but I could have</p> <p>22 foreclosed on the loans.</p> <p>23 Q Even though you don't have the dates, at</p> <p>24 the time that you sign the security agreement you</p> <p>25 believed that you could have foreclosed on the loan;</p>

<p style="text-align: right;">Page 442</p> <p>1 L. EBER</p> <p>2 is that right?</p> <p>3 MR. RAMSEY: Form.</p> <p>4 A I think the security agreement gave me</p> <p>5 preference as a creditor, gave me comfort, as any</p> <p>6 good businessman would do.</p> <p>7 Q Was there any benefit to the Eber</p> <p>8 Brothers -- I'm sorry. Withdrawn. Was there any</p> <p>9 benefit to Eber Brothers Wine & Liquor Corp. as a</p> <p>10 result of you foreclosing on the loan and taking</p> <p>11 over Eber Metro?</p> <p>12 MR. RAMSEY: Form.</p> <p>13 A Benefit?</p> <p>14 Q Yes.</p> <p>15 A Well, I think it's how you describe a</p> <p>16 benefit.</p> <p>17 Q How do you describe benefit?</p> <p>18 MR. RAMSEY: Form.</p> <p>19 A Keeping the entity alive.</p> <p>20 Q Is taking away the only remaining asset to</p> <p>21 the company beneficial to the company, in your</p> <p>22 definition?</p> <p>23 MR. RAMSEY: Form.</p> <p>24 A I did what any reasonable creditor would</p> <p>25 do to protect my investment. The money that I</p>	<p style="text-align: right;">Page 444</p> <p>1 L. EBER</p> <p>2 PBGC took that away from me.</p> <p>3 MR. RAMSEY: Brian, I know we covered</p> <p>4 this.</p> <p>5 THE WITNESS: He goes over and over.</p> <p>6 Q I'm transitioning to another topic here,</p> <p>7 but we discussed before that you were getting from</p> <p>8 mid-2007 through 2012 \$600,000 a year from Southern</p> <p>9 Wine and Spirits; correct?</p> <p>10 A Yes.</p> <p>11 Q Now, if that \$600,000 a year had been paid</p> <p>12 to Eber Brothers Wine & liquor Corp. instead of to</p> <p>13 you and then you just received your salary, maybe</p> <p>14 with an increase in it, would Eber Brothers Wine &</p> <p>15 Liquor Corp. have needed any loans from you?</p> <p>16 MR. RAMSEY: Form.</p> <p>17 A Yes.</p> <p>18 Q What is your basis for saying that?</p> <p>19 A If you look, I put 7, 8million,</p> <p>20 \$9 million.</p> <p>21 Q Well --</p> <p>22 A But I worked for that money.</p> <p>23 Q As of 2012, as of mid-2012 you put in</p> <p>24 according to your foreclosure action that you filed,</p> <p>25 a little over \$3 million and then with interest it</p>
<p style="text-align: right;">Page 443</p> <p>1 L. EBER</p> <p>2 loaned and put into the company that kept it afloat</p> <p>3 otherwise it would have been liquidated, the whole</p> <p>4 system would have.</p> <p>5 Q So that's what a reasonable creditor would</p> <p>6 do, but why would a trustee allow that to happen?</p> <p>7 MR. RAMSEY: Form.</p> <p>8 Q Did you think about it from that</p> <p>9 prospective at the time?</p> <p>10 MR. RAMSEY: Form.</p> <p>11 A I discussed it with the other trust</p> <p>12 people. They knew about it.</p> <p>13 Q And so what was your understanding as to</p> <p>14 why it was beneficial for the trust for you to</p> <p>15 foreclose on the loan?</p> <p>16 MR. RAMSEY: Form.</p> <p>17 A There wouldn't be a loan to foreclose on</p> <p>18 if I didn't come up with the money. There wouldn't</p> <p>19 be anything. The whole Eber Brothers, Eber</p> <p>20 Connecticut would all go away.</p> <p>21 Q Where did you get the money to loan to the</p> <p>22 company?</p> <p>23 A Where did I get the money?</p> <p>24 Q Yes.</p> <p>25 A I gave up 1.5 million in my pension plan,</p>	<p style="text-align: right;">Page 445</p> <p>1 L. EBER</p> <p>2 was roughly \$3,650,000. Does that sound about</p> <p>3 right?</p> <p>4 A I don't know. It could have been more</p> <p>5 with interest. I thought it was more but I would</p> <p>6 have to check it.</p> <p>7 Q And of that a lot of that was a loan that</p> <p>8 had been given in 2006; is that right?</p> <p>9 A I don't remember the dates of the loan.</p> <p>10 Q Do you remember how much money you loaned</p> <p>11 to Eber Brothers between mid-2007 and mid-2012?</p> <p>12 A No.</p> <p>13 MR. RAMSEY: Brian, unless you're</p> <p>14 transitioning, we have done this. We have done</p> <p>15 Southern before. There's nothing new about</p> <p>16 this or about Southern.</p> <p>17 Q With respect to the Southern transaction</p> <p>18 did you discuss -- let me step back. You testified</p> <p>19 before about your responsibilities was largely in</p> <p>20 governmental relations work; correct?</p> <p>21 A That was the start of it.</p> <p>22 Q Okay. Did have any experience with</p> <p>23 government relations?</p> <p>24 A Yes.</p> <p>25 Q How did you get that experience?</p>

<p style="text-align: right;">Page 446</p> <p>1 L. EBER</p> <p>2 A From working over the years in the</p> <p>3 legis -- with the -- we're regulated by the laws in</p> <p>4 Albany and federally.</p> <p>5 Q Who was paying your salary during that</p> <p>6 time?</p> <p>7 A Eber Brothers.</p> <p>8 Q Eber Brothers Wine & Liquor Corp?</p> <p>9 A Yes.</p> <p>10 Q So other than your experience from working</p> <p>11 with Eber Brothers Wine & Liquor Corp. did you have</p> <p>12 any other way in which you acquired experience that</p> <p>13 was relevant to your work with Southern?</p> <p>14 A Yeah. I had taken courses, my education.</p> <p>15 Q When was that?</p> <p>16 A Well, I went after college and I worked.</p> <p>17 I worked for the company but I had extra time. I</p> <p>18 got into governmental affairs.</p> <p>19 Q Did you ever think about whether your</p> <p>20 consulting agreement with Southern was taking</p> <p>21 anything away from Eber Brothers Wine & Liquor</p> <p>22 Corp.?</p> <p>23 MR. RAMSEY: Form.</p> <p>24 A No.</p> <p>25 MR. RAMSEY: Brian, you already asked</p>	<p style="text-align: right;">Page 448</p> <p>1 L. EBER</p> <p>2 Q Do you know who David Dean is?</p> <p>3 A Yes.</p> <p>4 Q Who is he?</p> <p>5 A He was the chief financial officer of</p> <p>6 Slocum.</p> <p>7 Q Did he continue working with Slocum after</p> <p>8 Eber Brothers acquired it?</p> <p>9 A Short period of time.</p> <p>10 Q So this letter it says, it's a letter from</p> <p>11 David Dean to John Ryan saying, "Enclosed, please,</p> <p>12 find the due diligence binder responding to your</p> <p>13 recent information request." Do you know what the</p> <p>14 due diligence binder is?</p> <p>15 A I have an idea.</p> <p>16 Q What is your idea?</p> <p>17 A After they done an audit of the company</p> <p>18 what it shows.</p> <p>19 Q So is it fair to say that this was</p> <p>20 documentation that was relevant to whether Eber</p> <p>21 Brothers would acquire Slocum & Sons and if so at</p> <p>22 what price?</p> <p>23 A It was something that they looked at but I</p> <p>24 don't think it determined the price.</p> <p>25 Q What did determine the price of Slocum &</p>
<p style="text-align: right;">Page 447</p> <p>1 L. EBER</p> <p>2 these questions.</p> <p>3 MR. BROOK: I don't know if I asked that.</p> <p>4 MR. RAMSEY: Southern was covered in</p> <p>5 depth.</p> <p>6 MR. BROOK: Let's change the topic. Let's</p> <p>7 mark this at Exhibit 111. So we're clear at</p> <p>8 the outset, the topic was covered but a</p> <p>9 document has not yet been produced. Exhibit</p> <p>10 111 bears Bates numbers 33279 through 300.</p> <p>11 (EB33279 to EB33300 was marked</p> <p>12 as Plaintiff's Exhibit 111 for</p> <p>13 identification.)</p> <p>14 Q This is an excerpt to a larger file that</p> <p>15 followed the cover letter. Do you recognize this at</p> <p>16 all?</p> <p>17 A I don't remember it.</p> <p>18 Q Do you know who John Ryan is?</p> <p>19 A Yes.</p> <p>20 Q He was their chief financial officer;</p> <p>21 correct?</p> <p>22 A Yes.</p> <p>23 Q This is a letter dated November 17, 2004</p> <p>24 from David Dean.</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 449</p> <p>1 L. EBER</p> <p>2 Sons?</p> <p>3 A What someone would pay for it.</p> <p>4 Q So the financials didn't have any impact</p> <p>5 on that; is that right?</p> <p>6 A It's something but the important thing is</p> <p>7 what a willing buyer will pay to buy a company.</p> <p>8 Q How did you determine that?</p> <p>9 A What the market would -- I did not do this</p> <p>10 but it was what the market could pay in the</p> <p>11 competitive bidding and how Strategic it was to Eber</p> <p>12 Brothers in New York.</p> <p>13 Q All right. So were you involved in</p> <p>14 setting the price to pay?</p> <p>15 A I was aware of some of it but I couldn't</p> <p>16 say I was directly involved in the whole deal.</p> <p>17 Q Who was involved in determining what price</p> <p>18 Eber Brothers would pay from Slocum & Sons?</p> <p>19 A Probably John Ryan and Pat Dalton.</p> <p>20 Q Did you have any input on that?</p> <p>21 A Yeah, I had input, and that it was</p> <p>22 strategically, not on the price, but it was</p> <p>23 strategically important to the welfare of New York</p> <p>24 that we buy this company as opposed to a competitor</p> <p>25 who would take the lines away from us in New York.</p>

<p style="text-align: right;">Page 466</p> <p>1 L. EBER</p> <p>2 competency that he had been before?</p> <p>3 A I believe it's taken a lot out of him and</p> <p>4 slowed him up.</p> <p>5 Q And you were relying on others at that</p> <p>6 point.</p> <p>7 A Others, but I always had a lot of respect</p> <p>8 for Mike.</p> <p>9 Q And when you said that you continued to</p> <p>10 view him as the attorney for you up until the time</p> <p>11 of his death, is it fair to say that that testimony</p> <p>12 by you reflected a sense of loyalty to Mike Gumaer</p> <p>13 as much as anything else?</p> <p>14 A Loyalty and respect.</p> <p>15 MR. CALIHAN: That's all questions that I</p> <p>16 have.</p> <p>17 CONTINUED EXAMINATION BY MR. BROOK:</p> <p>18 Q I do have another document that was</p> <p>19 produced from the last time you were here. This the</p> <p>20 was previously marked as Plaintiff's Exhibit 94.</p> <p>21 This is a set of documents, regarding looks like</p> <p>22 payments that were made to you by Southern Wine &</p> <p>23 Spirits, LLC. Do you recognize those documents?</p> <p>24 A Yes.</p> <p>25 Q What are they?</p>	<p style="text-align: right;">Page 468</p> <p>1 L. EBER</p> <p>2 Q And what kind of credit card is that?</p> <p>3 A My ordinary personal one.</p> <p>4 Q So it's a --</p> <p>5 A It's not a corporate card. It's my own</p> <p>6 personal one.</p> <p>7 Q And do you use that for anything other</p> <p>8 than Southern expenses?</p> <p>9 A Not usually.</p> <p>10 Q But sometimes?</p> <p>11 A It depends. If I lost another credit card</p> <p>12 I might use it but I try to keep it with the</p> <p>13 Southern expenses.</p> <p>14 Q Approximately how much in expenses -- let</p> <p>15 me withdraw that. In connection with your work for</p> <p>16 Southern have you always tracked expenses basically</p> <p>17 the same way?</p> <p>18 A Yes.</p> <p>19 Q And do you bill Southern for all the</p> <p>20 expenses that you incur?</p> <p>21 MR. RAMSEY: Form.</p> <p>22 A Expenses I incur on their business.</p> <p>23 Q On their business. Are there any expenses</p> <p>24 you incur in connection with your consulting work</p> <p>25 that you don't bill to Southern?</p>
<p style="text-align: right;">Page 467</p> <p>1 L. EBER</p> <p>2 A They're what they are. They're paying for</p> <p>3 services that I have provided them.</p> <p>4 Q And they're reimbursing you for expenses?</p> <p>5 A Yes.</p> <p>6 Q What kind of expenses did you incur in</p> <p>7 connection with your consulting work for Southern?</p> <p>8 A Travel to New York to Syosset, Long</p> <p>9 Island, to 800 3rd Avenue, to Albany, to Miami for</p> <p>10 meetings, to legislative districts throughout New</p> <p>11 York State.</p> <p>12 Q And how did you keep track of those</p> <p>13 expenses?</p> <p>14 A I filed reports. I get receipts and filed</p> <p>15 reports and send them into him.</p> <p>16 Q Did you also incur expenses in connection</p> <p>17 with your work for Eber Connecticut?</p> <p>18 A Yes.</p> <p>19 Q How did you keep track of those expense?</p> <p>20 A Same way.</p> <p>21 Q Do you have separate credit cards?</p> <p>22 A Yes.</p> <p>23 Q Did you have a specific credit card that</p> <p>24 you use just for Southern?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 469</p> <p>1 L. EBER</p> <p>2 A That I don't bill?</p> <p>3 Q Yeah.</p> <p>4 A There are things that I do for</p> <p>5 governmental work that I feel helps my position as a</p> <p>6 lobbyist and a governmental affairs person that I</p> <p>7 paid for personally.</p> <p>8 Q What kind of expenses are those?</p> <p>9 A Donations to legislators or seminar if I</p> <p>10 went to or meetings, or what have you, that could</p> <p>11 help me.</p> <p>12 Q Have you acquired any significant assets</p> <p>13 for your business, for your consulting business?</p> <p>14 A Assets from my consulting?</p> <p>15 Q Yes.</p> <p>16 A No.</p> <p>17 Q So you don't have a car specific to your</p> <p>18 consulting business?</p> <p>19 A No.</p> <p>20 Q And according to these documents you</p> <p>21 received reimbursement for \$118,371.21 expenses from</p> <p>22 Southern in the year 2018. Does that sound about</p> <p>23 right?</p> <p>24 A If that's what it says.</p> <p>25 Q Approximately how much time did you spend</p>

<p style="text-align: right;">Page 470</p> <p>1 L. EBER</p> <p>2 doing consulting work for Southern in 2018?</p> <p>3 A I don't remember the time. It's whatever</p> <p>4 had to be done. I could work 24 hours. I could</p> <p>5 work a whole week. I could work two, three days.</p> <p>6 It depends what's going on.</p> <p>7 Q Do you ever have conflicts in terms of</p> <p>8 what work to do for Southern versus Eber</p> <p>9 Connecticut?</p> <p>10 MR. RAMSEY: Form.</p> <p>11 A Sometimes.</p> <p>12 Q And how do you --</p> <p>13 A I do the best I can to do both.</p> <p>14 Q Would you say you do more work for</p> <p>15 Southern or more work from Eber Connecticut?</p> <p>16 MR. RAMSEY: Form.</p> <p>17 A I think it's a moot question. I couldn't</p> <p>18 answer it. I do what I have to for Southern and I</p> <p>19 do it when I'm needed at Connecticut.</p> <p>20 Q Has working for Southern impacted your</p> <p>21 ability to provide services for Eber Connecticut?</p> <p>22 MR. RAMSEY: Form.</p> <p>23 A No, it hasn't impacted it. It's helped</p> <p>24 Connecticut.</p> <p>25 Q How so?</p>	<p style="text-align: right;">Page 472</p> <p>1 L. EBER</p> <p>2 Q What import company was that?</p> <p>3 A Part -- it was Slocum. It was just -- the</p> <p>4 company was part of Slocum.</p> <p>5 Q It was a Slocum entity?</p> <p>6 A It was part of -- it was not an entity.</p> <p>7 It was just lines that Slocum had that they sold</p> <p>8 some of the wine in New York. That ceased.</p> <p>9 Q When did that cease?</p> <p>10 A Quite a few years ago, it lost a lot of</p> <p>11 money.</p> <p>12 Q Why did it cease?</p> <p>13 A Because it lost a lot of money.</p> <p>14 Q So it was a decision that you made to stop</p> <p>15 that?</p> <p>16 A Yes.</p> <p>17 Q Okay. Was it roughly at the same time</p> <p>18 that you started consulting for Southern?</p> <p>19 A No.</p> <p>20 Q So help me understand then, time wise,</p> <p>21 approximately when it was that the sales in New York</p> <p>22 stopped?</p> <p>23 A I don't remember the exact date but it was</p> <p>24 not profitable and Connecticut needed to watch</p> <p>25 Connecticut. The employees, I wanted them all to</p>
<p style="text-align: right;">Page 471</p> <p>1 L. EBER</p> <p>2 A There are suppliers that they have that I</p> <p>3 have been able to get to know and been able to get</p> <p>4 their lines for Connecticut.</p> <p>5 Q Which suppliers?</p> <p>6 A I don't remember the names but there are a</p> <p>7 bunch of them.</p> <p>8 Q Can you name even one?</p> <p>9 MR. RAMSEY: Form.</p> <p>10 A I just -- I don't want to get the wrong.</p> <p>11 MR. RAMSEY: If you remember you remember.</p> <p>12 A I can't remember there are -- it isn't</p> <p>13 exact. It's a relationship that they know you and</p> <p>14 they come and see you because I met them in New York</p> <p>15 and talked to them.</p> <p>16 Q And just I want to clarify something that</p> <p>17 came up in the deposition of Bob Lowenthal.</p> <p>18 (phonetic) Does Eber Connecticut have any business</p> <p>19 in New York?</p> <p>20 A Not anymore.</p> <p>21 Q Did it at one point in time?</p> <p>22 A They did.</p> <p>23 Q When was that?</p> <p>24 A When we first took it over they had an</p> <p>25 import company that they sold wine to New York.</p>	<p style="text-align: right;">Page 473</p> <p>1 L. EBER</p> <p>2 spend their time not sending, selling wine to other</p> <p>3 states but spend their time in building the</p> <p>4 Connecticut business.</p> <p>5 Q I'm just trying to get, you know, a</p> <p>6 ballpark sense, you best recollection?</p> <p>7 A I couldn't give you the date. I just</p> <p>8 don't remember it.</p> <p>9 Q Was it before you started consulting for</p> <p>10 Southern?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 A Before I started?</p> <p>13 Q Yes, that you stopped. Did Eber</p> <p>14 Connecticut stop selling in New York before --</p> <p>15 A No, it was after.</p> <p>16 Q Approximately how long after?</p> <p>17 A I don't remember.</p> <p>18 Q Years after?</p> <p>19 MR. RAMSEY: Form.</p> <p>20 A Could have been a couple of years. I</p> <p>21 don't remember.</p> <p>22 Q Did you ever discuss Eber Connecticut's</p> <p>23 sales in New York with Southern?</p> <p>24 A No.</p> <p>25 Q Did Eber Connecticut sales in New York</p>